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NORTH AMERICAN BOUNDARY.

A.

C O R R E S P O N D E N C E

RELATING TO THE

BOUNDARY

BETWEEN THE

BRITISH POSSESSIONS IN NORTH AMERICA

AND THE

UNITED STATES OF AMERICA,

UNDER THE

TREATY OF 1783.

SUBSEQUENTLY TO THE REFERENCE TO ARBITRATION OF THE DISPUTED POINTS
OF BOUNDARY, UNDER THE CONVENTION OF THE 29TH SEPTEMBER, 1827,
AND THE FIFTH ARTICLE OF THE TREATY OF GHENT.

WITH AN APPENDIX.

Presented to both Houses of Parliament by Command of Her Majesty,
1838.

LONDON:

PRINTED BY J. HARRISON AND SON.

DIOMAS
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CORRESPONDENCE

RELATING TO THE

NORTH AMERICAN BOUNDARY,

Subsequently to the Reference to Arbitration, of the Disputed Points of Boundary, under the Convention of the 29th September, 1827, and the Fifth Article of the Treaty of Ghent.

No. 1.

Viscount Palmerston to the Right Hon. C. R. Vaughan.

Sir,

Foreign Office, February 9, 1831.

I HAVE now to transmit to you a copy of the decision* which His Majesty the King of the Netherlands has communicated in duplicate to the Representatives of Great Britain and the United States at the Hague, upon the question of disputed boundary submitted by the two Governments to His Netherland Majesty's arbitration.

I am compelled by the pressure of other business to delay, until a future opportunity, whatever observations I may have to make to you upon the terms of this decision, against which, you will perceive by the enclosed copy of a paper communicated by the American Envoy at the Hague, to His Majesty's Ambassador at that Court, Mr. Preble has thought fit to protest in the name of his Government.

I can only acquaint you by this opportunity, that whatever might be the sentiments or wishes of His Majesty upon some of the points embraced in the decision of His Netherland Majesty, His Majesty has not hesitated to acquiesce in that decision, in fulfilment of the obligations which His Majesty considers himself to have contracted by the terms of the Convention of Arbitration of the 29th September, 1827; and His Majesty is persuaded that such will be the course adopted by the Government of the United States.

If, however, contrary to this expectation, the American Government should determine upon taking any step of the nature of that which has been adopted by Mr. Preble, and should make to you any communication to that effect, before you shall have received any farther instructions from me on that point, you will inform the American Minister, that you are not prepared to enter into any discussion upon such a subject, and that you can only transmit the communication to your Government for its consideration.

Right Hon. C. R. Vaughan,
&c. &c. &c.

I am, &c.,

(Signed)

PALMERSTON.]

Inclosure in No. 1.

W. P. Preble, Esq. to the Baron Verstolk de Soelen.

The Hague, January 12, 1831.

THE Undersigned, &c. &c., had the honor to receive from the hands of His Majesty, the King of the Netherlands, on the 10th instant, a document pur-

porting to be an expression of his opinion on the several points submitted to him as Arbiter, relative to certain portions of the boundary of the United States. In a period of much difficulty, His Majesty has had the goodness, for the purpose of conciliating conflicting claims and pretensions, to devote to the high parties interested, a time that must have been precious to himself and people. It is with extreme regret therefore, that the undersigned, in order to prevent all misconceptions, and to vindicate the rights of his Government, feels himself compelled to call the attention of His Excellency, the Baron Verstolk de Soelen, His Majesty's Minister of Foreign Affairs, again to the subject. But while on the one hand, in advertent to certain views and considerations, which seem in some manner, perhaps, to have escaped observation, the undersigned will deem it necessary to do so with simplicity and frankness, he could not on the other be wanting in the expressions of a most respectful deference for His Majesty, the Arbiter.

The language of the Treaty, which has given rise to the contestation between the United States and Great Britain, is, "And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, viz.: from the north-west angle of Nova Scotia, viz.: that angle which is formed by a line drawn due north from the source of the St. Croix River to the highlands, along the said highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraguy; East, by a line to be drawn along the middle of the river St. Croix from its mouth in the Bay of Fundy to its source; and from its source directly north to the aforesaid highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence."

The manner of carrying this apparently exceedingly definite and lucid description of boundary into effect, by running the line as described, and making the same on the surface of the earth, was the subject, the sole exclusive subject, submitted by the Convention of September, 1827, in pursuance of the Treaty of Ghent, 1814, to an arbiter. If, on investigation, that arbiter found the language of the Treaty, in his opinion, inapplicable to, and wholly inconsistent with, the topography of the country, so that the Treaty of 1783, in regard to its description of boundary, could not be executed according to its own express stipulations, no authority whatever was conferred upon him to determine or consider what practicable boundary line should, in such case, be substituted and established. Such a question of boundary, as is here supposed, the United States would, it is believed, submit to the definitive decision of no Sovereign. And, in the case submitted to His Majesty the King of the Netherlands, the United States, in forbearing to delegate any such power, were not influenced by any want of respect for that distinguished Monarch. They have, on the contrary, given him the highest and most signal proofs of their consideration and confidence. In the present case especially, as any revision or substitution of boundary whatever had been steadily, and in a spirit of unalterable determination, resisted at Ghent, and at Washington, they had not anticipated the possibility of there being any occasion for delegating such powers.

Among the questions to which the language of the Treaty of 1783, already quoted, gave rise between the high parties interested, is the following, viz.: where, at a point due north from the source of the river St. Croix, are "the highlands" which divide the rivers that empty themselves into the river St. Lawrence from those that fall into the Atlantic Ocean, at which same point on said highlands was also to be found the north-west angle of the long established, well known, and distinctly defined British province of Nova Scotia.

On the southern border of the river St. Lawrence, and at the average distance from it of less than thirty English miles, there is an elevated range or continuation of broken high land, extending from Cape Rosières south-westerly to the sources of Connecticut River, forming the southern border of the basin of the St. Lawrence, and the ligne des versants of the rivers emptying into it. The same highlands form also the ligne des versants on the north of the river Ristigouche, emptying itself into the Bay des Chaleurs, the river St. John with

its northerly and westerly branches emptying into the Bay of Fundy, the river Penobscot with its north-westerly branches emptying into the Bay of Penobscot, the river Kennebec and Androscoggin, whose united waters empty into the Bay of Sagadahock, and the river Connecticut emptying into the bay, usually called Long Island Sound. These bays are all open arms of the sea, or Atlantic Ocean, are designated by their names on Mitchell's map, and, with the single exception of Sagadahock, are all equally well known and usually designated by their appropriate names. This ligne des versants constitutes the highlands of the Treaty, as claimed by the United States.

There is another ligne des versants, which Great Britain claims as the highlands of the Treaty. It is the dividing ridge that bounds the southern side of the basin of the river St. John, and divides the streams that flow into the river St. John from those which flow into the Penobscot and St. Croix. No river flows from this dividing ridge into the river St. Lawrence. On the contrary, nearly the whole of the basins of the St. John and Ristigouche intervene. The source of the St. Croix also is in this very ligne des versants, and less than an English mile distant from the source of a tributary stream of the St. John. This proximity, reducing the due north line of the Treaty as it were to a point, compelled the provincial agents of the British Government to extend the due north line over this dividing ridge into the basin of the St. John, crossing its tributary streams to the distance of about forty miles from the source of the St. Croix, to the vicinity of an isolated hill, between two tributary streams of the St. John. Connecting that isolated hill with the ligne des versants, as just described, by passing between said tributary streams, they claimed it as constituting the highlands of the Treaty.

These two ranges of highlands, as thus described, the one contended for by the United States, and the other by Great Britain, His Majesty, the Arbitrator, regards as comporting equally well in all respects with the language of the Treaty. It is not the intention of the Undersigned in this place to question in the slightest degree the correctness of His Majesty's conclusion. But when the Arbitrator proceeds to say that it would be suitable to run the line due north from the source of the River St. Croix, not "to the highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence," but to the centre of the River St. John, thence to pass up the said river, to the mouth of the River St. Francis, thence up the River St. Francis to the source of its south-westernmost branch, and from thence by a line drawn west into the point, where it intersects the line of the highlands as claimed by the United States, and only from thence to pass "along said highlands which divide the rivers that fall into the Atlantic Ocean, from those which fall into the River St. Lawrence, to the north-westernmost head of Connecticut River," thus abandoning altogether the boundaries of the Treaty, and substituting for them a distinct and different line of demarcation, it becomes the duty of the undersigned, with the most perfect respect for the friendly views of the Arbitrator, to enter a protest against the proceeding, as constituting a departure from the power delegated by the High Parties interested, in order that the rights and interests of the United States may not be supposed to be committed by any presumed acquiescence on the part of their Representative near His Majesty the King of the Netherlands.

The Undersigned, &c.

Baron Verstolk de Soelen,
Sc. Sc. Sc.

(Signed) W. P. PREBLE.

No. 2.

Right Hon. C. R. Vaughan to Viscount Palmerston.—(Received April 15.)

My Lord,

Washington, March 12, 1831.

IT has been long known at Washington, that His Majesty the King of the Netherlands delivered, on the 10th January, to Mr. Preble the Minister from the United States, his decision upon the question of boundary referred to arbitration.

I am assured, however, by Mr. Van Buren, that this Government has not yet received the official communication of His Majesty's decision; though it appears that some communication of the import of it has been made by Mr.

Preble to the State of Maine, to which he belongs, as it is stated in the newspapers that the Legislature of that State, immediately took it into consideration in a secret Session; and, it is reported, that great dissatisfaction was expressed with the decision of the Arbitrer.

I have the honour to be, &c.,

Viscount Palmerston,
 &c. &c. &c.

(Signed)

C. R. VAUGHAN.

No. 3.

Right Hon. C. R. Vaughan to Viscount Palmerston.—(Received May 2.)

(Extract.)

Washington, March 20, 1831.

THE decision of the King of the Netherlands upon the question of boundary submitted to His Majesty's Arbitration, was received by way of Havre, by the Government of the United States on the 15th instant.

On the 18th instant a messenger was despatched with an official communication of it to the Government of the State of Maine.

I understand from Mr. Van Buren that the award of the King of the Netherlands has called forth a protest against it from Mr. Preble, the American Minister at the Hague, which I have not seen, but I understand that a copy of it was delivered to Sir Charles Bagot, and, I presume, therefore, that His Majesty's Government is already in possession of it.

This Government has resolved to abstain from any expression of an opinion, until they are in possession of the answer to their official communication of the award to the State of Maine.

No. 4.

Right Hon. C. R. Vaughan to Viscount Palmerston.—(Received May 23.)

(Extract.)

Washington, April 12, 1831.

WE are at length in possession of the manner in which the Governor and Legislature of Maine have received the award of the King of the Netherlands, as, on the 5th instant, a newspaper published at Portland, the seat of Government of that State, commenced the publication of documents which had been officially communicated by the President, when the award of the King of the Netherlands was transmitted to the Governor.

The first part only of these documents published in Maine has yet reached Washington, and I have the honour to enclose a copy* extracted from a newspaper.

They consist of a message from the Governor of Maine to the legislature, submitting to the consideration of the Senate and the House of Representatives, a despatch from the Secretary of State of the United States, with copies of the award of the King of the Netherlands. These documents are to be followed by a publication of the protest of Mr. Preble, of the correspondence of the latter with Sir Charles Bagot, and an account of the proceedings of the legislature.

Mr. Van Buren expresses the desire of the President, that while the matter was under deliberation, no steps should be taken by the State of Maine with regard to the disputed territory, which might be calculated to interrupt or embarrass the action of the Executive Government.

I observe in Mr. Van Buren's despatch, the Governor of Maine is informed that Mr. Preble has asked for leave of absence from his mission to the Netherlands, in order that he may return to the United States, and be further heard upon the subject of the award of the King, before any measures in regard to it are adopted by the President. The immediate compliance on the part of the Government with Mr. Preble's request, indicates that no measures will be taken by the Government until Mr. Preble shall arrive.

I have endeavoured to procure from the Secretary of State a copy of the proceedings of the legislature of Maine, which will, in time, appear in the

* See Class B, page 2.

newspapers; but the Government has not yet received any account of them.

According to the newspaper of Maine, the result of those proceedings was a decision of the legislature, that the arbitration of the King of the Netherlands was not binding on the United States, because His Majesty had not given a decision, but his *advice* only as to certain disputed points.

I hope to be able to transmit to your Lordship by the next packet, the remainder of the documents expected from Maine.

No. 5.

Right Hon. C. R. Vaughan to Viscount Palmerston.—(Received June 2.)

(Extract.)

Washington, April 20, 1831.

I HAVE the honour to acknowledge the receipt, yesterday, by way of Halifax and Boston, of your Lordship's despatch, dated the 9th of February, containing a copy of the decision of His Majesty, the King of the Netherlands, upon the question of boundary submitted to his arbitration, together with a copy of the protest which the American Minister at the Hague thought fit to make, in the name of his Government.

With respect to Mr. Preble's protest, when the Secretary of State communicated it to the Governor of Maine, he expressly stated that it had been made by Mr. Preble without instructions from his Government. I am well pleased to learn from your Lordship, that His Majesty has not hesitated to acquiesce in the decision of the King of the Netherlands, in fulfilment of the obligations which His Majesty considers himself to have contracted by the terms of the Convention of Arbitration of the 29th September, 1827. I regret that it is not yet in my power to state to His Majesty's Government what will be the course adopted by the Government of the United States. The strictest reserve is manifested respecting the opinion of the Government.

In my despatch of April 12, I forwarded to your Lordship the commencement of the documents which have been published in the newspapers of Maine. The report which has since been made by the legislature of Maine, after having taken into consideration the decision of the King of the Netherlands, and other papers which had been transmitted to the Governor by the President, begins by referring to former discussions and correspondence between the general Government and the State of Maine, and particularly to a protest made by the State of Maine in 1827, against the general Government assuming a right under the Constitution to cede or transfer any portion of the territory of any State; and the general Government is reminded, that the State of Maine had already declared their views of the Convention of 1827, the authority of which they never admitted; and that they should not consider themselves bound by any decision under it.

The report then observes that, instead of deciding the points of difference between the two Governments according to the terms of the Vth Article of the Treaty of Ghent, the King of the Netherlands has suggested only a mode by which the controversy between the two parties may be decided, and the United States cannot be bound to adopt the advice which was not asked, and which was given under circumstances which must have induced the arbitrator to favour the pretensions of Great Britain. The report ends with declaring that the United States must not adopt the decision, or, if they do, it will be a violation of the constitutional rights of the State of Maine.

I infer, from the readiness with which a leave of absence was granted to Mr. Preble, that no measures will be adopted by the President respecting the decision of the King of the Netherlands, until Mr. Preble has been farther heard upon the subject, according to his earnest request.

I shall be prepared, should the American Government make any communication to me of the nature of Mr. Preble's protest, to conform strictly with the instructions of your Lordship, and transmit their communication to His Majesty's Government for consideration.

No. 6.

Charles Bankhead, Esq. to Viscount Palmerston.—(Received August 22.)

(Extract.)

Washington, July 21, 1831.

I HAVE the honour to acquaint your Lordship that Mr. Preble, Minister from the United States to the Netherlands, arrived at New York some days ago.

Mr. Vaughan informed your Lordship, in his despatch of the 12th of April, that Mr. Preble had obtained leave of absence for the purpose of explaining to his Government the reasons which induced him to protest against the decision of the King of the Netherlands upon the subject of the disputed territory. The same reserve which was manifested upon that question by Mr. Van Buren towards His Majesty's Minister, has been continued to me on the part of the present Secretary of State, Mr. Livingston. I was, however, informed by that gentleman, some days ago, that a reference would be had to the State of Maine before any determination could be taken by the general Government; and, in corroboration of this remark, I find that Mr. Preble, instead of proceeding direct to Washington, has left New York for Maine, for the purpose, I presume, of collecting the sentiments of the authorities of that State upon the question at issue.

No opinion on the part of the United States can be expected before the autumn; but I am not altogether without hopes, that the pretensions of the State of Maine, as put forth in the resolutions of their legislature, will be much softened, and that an acquiescence will, at last, be given to the opinion of the Royal Arbitrator.

Mr. Van Buren, it is understood, will leave this country for England shortly after the arrival of Mr. McLane, who is expected in the course of next month. The *Potomac* frigate, which is to convey Mr. Van Buren, is lying in readiness at New York.

No. 7.

Charles Bankhead, Esq. to Viscount Palmerston.—(Received September 22.)

(Extract.)

New York, August 23, 1831.

SINCE I had the honour of addressing your Lordship in my despatch of July 21, Mr. Preble, late Minister of the United States at the Hague, arrived at Washington; and whatever were the sentiments and wishes of the State of Maine, in relation to the disputed territory, they were, I presume, at that time communicated to the President and Secretary of State.

I learn from Mr. Livingston that Mr. Van Buren has been instructed to make some communications to His Majesty's Government upon the subject of the decision of the King of the Netherlands, but of the exact nature of them he did not acquaint me. Mr. Livingston seemed to be ignorant of the determination of the British Government, with reference to that decision, *officially* expressed, and Mr. Van Buren, I believe, is directed to ask, *officially*, the views of the British Government upon this subject.

I learn from an authority which I have no reason to doubt, that before the President can consent to the provisions contained in the royal award, it will be necessary to receive the approbation of the Senate, as the President has no power of himself to alienate any part of the territory of an individual State. This is the language of the persons most conversant with the feelings of the State of Maine, and it coincides with the communication made to me by Mr. Livingston, that the decision of this Government cannot be expected before the meeting of Congress.

Any other measure which may be taken between the two Governments, of the nature of a Convention, would be equally subject to the approval of the Senate of the United States.

No. 8.

Viscount Palmerston to Charles Bankhead, Esq.

Sir, *Foreign Office, October 14, 1831.*
 WITH reference to my despatch of February 9, of this year, to Mr. Vaughan, on the subject of the award of His Majesty, the King of the Netherlands, upon the question of the disputed boundary, submitted by Great Britain and the United States of America, to the arbitration of that Sovereign, I am commanded by the King to instruct you to address a note to the American Secretary of State to the following effect.

Mr. Livingston is doubtless aware that his predecessor in office was informed, verbally, by Mr. Vaughan, that the King, our Master, upon the receipt of the instrument by which the award of the King of the Netherlands was communicated to the British Government, had considered himself bound, in fulfilment of the obligations which he had contracted by the terms of the Convention of arbitration of the 29th September 1827, to express to His Netherland Majesty, His Majesty's assent to that award.

It appears to His Majesty's Government, that the time is now arrived, when a final understanding between the British and American Governments, on the subject of that award, and on the measures necessary to be taken for carrying it into effect, ought no longer to be delayed: and I am accordingly to direct that, in making to the American Secretary of State, the present more formal communication of the assent of His Majesty, to the decision of His Netherland Majesty, you enquire of Mr. Livingston whether his Government are now ready to proceed, conjointly with that of Great Britain, to the nomination of Commissioners for marking out the boundary between the possessions of His Majesty in North America, and those of the United States, agreeably to his Netherland Majesty's award.

His Majesty's Government are not ignorant that the Minister of the United States of America residing at the Hague, immediately upon the receipt of the award of His Netherland Majesty, protested against that award, on the ground that the arbitrator had therein exceeded the powers conferred upon him by the parties to the arbitration. But that protest was avowedly made without instructions from Washington, and His Majesty is persuaded that the Government of the United States, influenced, like His Majesty, by a sincere determination to give a fair and full effect to the spirit and intention of their engagements, no less than by an anxious desire to settle this long pending difference between the two Governments, in the only way which the experience of so many years has shewn to be practicable, will not hesitate to accept the award of His Netherland Majesty.

In deciding to give his own assent to this award, for the reasons above stated, His Majesty was not insensible to the sacrifice which he was thus making of a most important portion of those claims, of the justice of which in their full extent His Majesty continues to be, as he has always been, entirely satisfied.

It was impossible for His Majesty to see without deep regret, that, on one branch of the British claims, the award deprived the British Crown of a large tract of country, to which it had long been held to be entitled, while on another branch of the claims, that award, at the same time that it pronounced in favour of the principle of demarcation for which Great Britain contended, introduced a special modification of that principle for the convenience and advantage of the United States, without offering to Great Britain, any compensation for the loss thus occasioned to her.

But these were not considerations by which His Majesty thought himself at liberty to be influenced, in deciding the question of his acceptance or rejection of the decision of His Netherland Majesty. In whatever degree His Majesty's wishes or expectations may have been disappointed by that decision, His Majesty did not hesitate to act upon the stipulation contained in the VIIIth Article of the Convention of Arbitration, that "the decision of the arbiter when given, shall be taken to be final and conclusive;" and His Majesty fulfilled this duty with the greater cheerfulness, from the confident hope that in thus completing the engagement which he had contracted, he was finally setting at rest a dispute which had been so long and so hopelessly agitated, between the two Governments, to the interruption of that perfect agreement and harmony on all points, which

it is His Majesty's sincere desire to see permanently established between Great Britain and the United States of America.

His Majesty would indeed be deeply grieved, if he could suppose that the Government of the United States could hesitate to adopt the same course which His Majesty has pursued on this occasion. For what other prospect of an adjustment of this long pending difference would then remain? Commissioners since the Treaty of 1783, have found it impossible to reconcile the description of the boundary contained in that Treaty, with the real features of the country ascertained by actual survey; and the hopelessness of establishing absolutely, in favour of either party, the point which has thus, since the year 1783, been the subject of controversy between them, has now received a new confirmation by the solemn decision of an arbitrator, chosen by both parties, who has pronounced it to be incapable of being established in accordance with the terms of the original Treaty, that Treaty having been drawn up in ignorance of the real features of the country, which it professed to describe.

Seeing that there cannot be a settlement of the claims of either party in strict accordance with the Treaty of 1783, what course would remain, even if the choice were now to be made, but that which was agreed upon by the negotiators of the Treaty of Ghent; viz. the adjustment of the differences between the two Governments by means of an arbitrator? And how unreasonable would it be to object to such an adjustment, because it aimed at settling by compromise, differences pronounced to be otherwise irreconcilable. That such an adjustment, and not a rigid adoption of one of the two claims to the exclusion of all compromise, was the object of the IVth Article of the Treaty of Ghent, will be manifest upon referring to that Article, in which provision is made for a decision of the arbiter which should be final and conclusive, even although the arbiter, owing to the neglect or refusal of one of the parties, should have had before him only one of the two claims which it would be his province to adjust. Even the official correspondence of the United States furnishes proofs that such was the understanding in that country, and among parties most interested in the subject, as to what would be the effect of the reference of this question to arbitration. "By arbitration," (says the Governor of the State of Maine, in a letter to the President of the United States, dated May 19th, 1827, and previously, of course, to the conclusion of the Convention), "I understand a submission to some Foreign Sovereign or State, who will decide at pleasure on the whole subject, who will be under no absolute obligations or effectual restraint, by the virtue of the Treaty of 1783." And it appears, by a letter from the same functionary, dated the 18th of April in the same year, that Mr. Gallatin had used the following words, in a despatch to his Government on the same subject: "An umpire, whether a king or a farmer, rarely decides on strict principles of law, he has always a bias, to try, if possible, to split the difference:" and the Secretary of State of the United States, in a letter to the Governor of Maine, written after the conclusion of the Treaty of Arbitration (viz. on the 27th of November, 1827), adverting to the above-mentioned exposition, by Mr. Gallatin, of the usual practice of umpires, and to the objection which the Governor of Maine had thereupon stated to the mode of settlement by arbitration, while he defends the Convention in spite of the objection of the Governor of Maine, admits that it is an objection to which the Convention is liable.

These passages will be found in the printed paper, No. 171, 30th Congress, 1st Session, at pages 80, 85, and 99.

On every ground, therefore, His Majesty feels confident that if the Government of the United States have not already, before your receipt of this despatch, announced their assent to the award of the King of the Netherlands, they will not hesitate to enable you to apprise His Majesty's Government of their acquiescence in that decision. The grounds on which His Majesty's acceptance of it was founded, have been fully explained to you in this despatch, and among the motives which influenced His Majesty on that occasion, there was none more powerful than the anxious desire which His Majesty feels, to improve and confirm the harmony which so happily exists on other subjects, between Great Britain and the United States of America, by thus settling, once for all, a question of great difficulty, and for which His Majesty is unable to see any other satisfactory solution.

I am, &c.

C. Bankhead, Esq.,
&c. &c. &c.

(Signed) PALMERSTON.

No. 9.

Viscount Palmerston to Charles Bankhead, Esq.

Sir,

Foreign Office, October 14, 1831.

YOU will learn from the instruction, contained in my other despatch of this date, on the subject of the north-eastern boundary, that the communication which you are to make, in the name of His Majesty, to the Government of the United States, extends no farther than to propose a simple and unconditional acceptance of the award of the King of the Netherlands by the United States, and the consequent appointment of commissioners to carry that award into effect; such being, in the opinion of His Majesty's Government, the only course to be pursued at the present stage of the boundary question, consistently with the respective interests and obligations of the two Governments.

You are nevertheless authorized to intimate privately to the American Minister, upon any suitable occasion, that His Majesty's Government would not consider the formal acceptance of the award by Great Britain and the United States, as necessarily precluding the two Governments from any future modification of the terms of the arrangement prescribed in that instrument, provided it should appear that any particular parts of the boundary line, thus established, were capable of being improved to the mutual convenience and advantage of both countries; and you will state, that, after the award shall have been formally acceded to by both Governments, His Majesty's Government will be ready to enter, with the Government of the United States, into the consideration of the best means of effecting any such modification by reciprocal exchange and concession.

You will, however, be particularly cautious in making any communication of this nature, to guard against the possibility of being misunderstood as inviting negotiation as a substitute for the adoption of the award.

Until the award is mutually adopted, any such concert between the two Governments would be impossible, because each party claiming the whole of the territory in dispute, there is no boundary line between the two, with respect to which modifications could be proposed by either party; but when the award is acquiesced in by both sides, and a boundary line is thus established to which both Governments shall have assented, there will then be a basis upon which exchanges or modifications might reciprocally be effected.

I am, &c.

Charles Bankhead, Esq.

(Signed)

PALMERSTON.

&c. &c. &c.

No. 10.

Charles Bankhead, Esq., to Viscount Palmerston — (Received December 29.)

My Lord,

Washington, December 6, 1831.

I HAVE the honour to transmit to your Lordship, a copy of the Message from the President of the United States, delivered, this day, to both Houses of Congress, upon the commencement of the session.

I have the honour to be, &c.

(Signed)

CHARLES BANKHEAD.

Viscount Palmerston.

&c. &c. &c.

Inclosure in No. 10.

Extract from the Message of the President.

'AFTER our transition from the state of colonies to that of an independent nation, many points were found necessary to be settled between us and Great Britain. Among them was the demarcation of boundaries, not described with sufficient precision in the Treaty of peace. Some of the lines that divide the states and territories of the United States from the British provinces, have been definitively fixed. That, however, which separates us from the provinces of Canada and New Brunswick to the north and the east, was still in dispute when I came into office. But I found arrangements made for its settlement, over which I had no control. The commissioners who had been appointed under the provisions of the Treaty of Ghent, having been unable to agree, a Convention was

made with Great Britain by my immediate predecessor in office with the advice and consent of the Senate, by which it was agreed "that the points of difference which have arisen in the settlement of the boundary line between the American and British dominions, as described in the 5th Article of the Treaty of Ghent, shall be referred, as therein provided, to some friendly Sovereign or State, who shall be invited to investigate, and make a decision upon such points of difference;" and the King of the Netherlands having, by the late President, and His Britannic Majesty, been designated as such friendly Sovereign, it became my duty to carry, with good faith, the agreement so made, into full effect. To this end I caused all the measures to be taken which were necessary to a full exposition of our case, to the sovereign arbiter; and nominated as Minister Plenipotentiary to his court, a distinguished citizen of the State most interested in the question, and who had been one of the agents previously employed for settling the controversy. On the 10th day of January last, His Majesty the King of the Netherlands delivered to the Plenipotentiaries of the United States, and of Great Britain, his written opinion on the case referred to him. The papers in relation to the subject will be communicated by a special message to the proper branch of the Government, with the perfect confidence that its wisdom will adopt such measures as will secure an amicable settlement of the controversy, without infringing any constitutional right of the States immediately interested.

No. 11.

Charles Bankhead, Esq. to Viscount Palmerston.—(Received January 16.)

(Extract.)

Washington, December 20, 1831.

I HAVE the honour to acknowledge the receipt on the 18th instant, of your Lordship's despatch dated 14th October.

In obedience to His Majesty's commands conveyed to me by your Lordship, I addressed a note to the Secretary of State, in nearly the same terms employed in your Lordship's despatch.

As the award of the King of the Netherlands upon the subject of the boundary between His Majesty's North American provinces, and the United States, is at present before the Senate for their decision, Mr. Livingston is unable, at present to answer my note; but assures me that in a very few days, I may expect a communication upon the subject of that decision.

The Secretary of State seemed most anxious to receive from me the announcement of His Majesty's assent to the award, and I have no doubt that my note will forthwith be submitted to the Senate.

No. 12.

Charles Bankhead, Esq. to Viscount Palmerston.—(Received March 7.)

(Extract.)

Washington, February 12, 1832.

THE Legislature of the State of Maine have passed several resolutions, with reference to the decision of the King of the Netherlands, upon the north-eastern boundary, and they have appointed Mr. Preble, who lately returned from Holland, to present them to the Senate of the United States.

The award of the King of the Netherlands has been for a length of time before the Senate, and I fear that Mr. Preble's arrival will in some degree delay the decision of the question by that branch of the executive.

No. 13.

Charles Bankhead, Esq. to Viscount Palmerston.—(Received April 23.)

(Extract.)

Washington, March 29, 1832.

MR. PREBLE has been for some time in Washington, charged by the State of Maine to protect their interests, respecting the boundary between that State and New Brunswick. The proceedings of the Secret Session of the Council and House of Representatives of Maine have lately been disclosed to the public, and it appears that an agreement has taken place, subscribing, under certain conditions, to the decision of the King of the Netherlands. Those conditions, as given in the Maine Newspapers, are, that Commissioners, on the part of the

United States, and on the part of the State of Maine, are to be appointed in order to negotiate as to an indemnity to be given by the former to the latter, for the loss which she alleges that she would suffer by her acceptance of the Netherlands arbitration. That the result of this commission is to be laid before the legislature for their ultimate acceptance or rejection.

I immediately asked the Secretary of State what degree of credit I was to attach to this report; Mr. Livingston told me that the whole question was still under discussion, but that he hoped in a very short time to be enabled to transmit to me the different papers connected therewith, and to give such an answer to my note as should be satisfactory.

No. 14.

Charles Bankhead, Esq. to Viscount Palmerston.—(Received July 13.)

My Lord,

Washington, June 13, 1832.

I HAVE heretofore delayed the fulfilment of the instructions which I had the honour of receiving from your Lordship, in your despatch of October 14, of last year, respecting the ulterior views which His Majesty's Government might entertain, when the question of boundary, as awarded by the King of the Netherlands, should have been fully acquiesced in by the United States.

I did so, because the Senate in its executive capacity had shewn no disposition to take up the question, and I thought that the slightest intimation on my part, as to the possibility of future negotiation, would, perhaps, endanger the favourable decision of the Senate upon the original question, which decision, fully and unconditionally declared, was to precede any other step which might be taken thereupon. However, during the last two days, I learnt that the whole boundary question has been under the consideration of the Senate; and Mr. Livingston informed me, that he hoped very soon to be able to communicate to His Majesty's Government the decision of the United States upon it. I thought that this was a proper moment, informally, to intimate to the Secretary of State that His Majesty's Government might not be indisposed to enter into explanations with this Government with a view to effect some modifications by reciprocal exchange and concession, but that the full and unconditional acceptance of the award by this country must precede any such intention on the part of Great Britain.

Mr. Livingston asked me (and he did so informally) whether I was authorized to make or to receive any overture before the President had signified his assent to the award; I replied, of course, in the negative.

I hope that your Lordship will not consider that I have exceeded the discretionary power with which you invested me in bringing forward, at this moment, the possibility of a future arrangement being effected relative to the north-east boundary.

I have the honour to be, &c.

Viscount Palmerston.

(Signed) CHARLES BANKHEAD.

Sc. Sc. Sc.

No. 15.

Charles Bankhead, Esq. to Viscount Palmerston.—(Received August 9.)

(Extract.)

Washington, July 13, 1832.

IT is with great regret that I have to announce to your Lordship, that the Senate has refused to sanction the acquiescence, on the part of the President of the United States, to the award of the King of the Netherlands on the disputed territory.

The subject was submitted to that body early in the session, and accompanied by the earnest wish of the President, that the award should be agreed to. The message was referred to the committee on foreign relations who reported their opinion that the President's views should be acceded to. A motion was then made that the votes of two thirds of the Senate should be considered necessary to pronounce a final opinion. This enabled the opponents of the measure to defeat the views of the Government, and finally, the Senate withheld their assent to the award of His Netherlands Majesty, and recommended

to the President to enter into farther negotiations respecting the territory in dispute.

I am sure that the President and his Cabinet, regret this decision on the part of the Senate.

I have not yet received from the Secretary of State the official notification of this proceeding, but I am given to understand that such a document is in preparation, and Mr. Livingston informs me that he hopes the tenour of it will be such as shall, in some degree, be satisfactory to His Majesty's Government.

No. 16.

Charles Bankhead, Esq., to Viscount Palmerston.—(Received August 18.)

My Lord,

Washington, July 21, 1832.

I AM at length enabled to transmit to your Lordship a copy of the note from the Secretary of State of the United States, in answer to the one which I had the honour of communicating to this Government in December last, and which contained the accession of His Majesty to the award of the King of the Netherlands upon the subject of the north-east boundary.

I regret to state to your Lordship that the Senate of the United States have not consented to follow the unreserved and conciliatory conduct which influenced His Majesty on this occasion.

The Secretary of State, in the enclosed letter, states that the reasons which have induced the Senate thus to set aside the award, are to be found in the manner in which that award was given,—that a distinct question was proposed for His Netherland Majesty's decision; and that, instead of offering his opinion as to the true meaning of that part of the Treaty of 1783, which relates to the north-east boundary, His Majesty overlooked the claims of both of the contending parties, and assumed the character of a mediator in advising them to accept a line of boundary which was not in accordance with the one which each contended for. The Senate, however, resolved to advise the President to open a new negotiation with His Majesty's Government for ascertaining the true boundary under the provisions of the Treaty of 1783.

In a latter part of Mr. Livingston's note, he states, that even should the negotiators be unable to agree on the true line, as designated by the Treaty, means will be found of avoiding certain constitutional difficulties hitherto attendant on the establishment of a boundary more convenient than that designated by the Treaty or by the award; as an arrangement is in progress between the State of Maine, and the general Government, for the purpose of clothing the latter with more ample powers to effect that end.

Such a negotiation, if co-incided in by His Majesty's Government, will, says Mr. Livingston, naturally embrace the right of navigation of the River St. John. How such an important concession will be viewed by His Majesty's Government, it is not for me to judge, but it is one which has long been desired by the United States, and by obtaining which, they expect to derive great advantages.

Various reasons are adduced by the Secretary of State for desiring that such a negotiation (if entered into) should be opened at Washington, and he concludes with the expression on the part of the President, of an anxious desire that the difference may be settled to the mutual benefit and good will of the parties interested.

I thought right merely to acknowledge the receipt of Mr. Livingston's note, without taking any exception to the conduct of the Senate in rejecting the award, or offering any remark on the length of time which has elapsed before that body have come to a decision upon the subject.

I have the honour to be, &c.

Viscount Palmerston, G.C.B.

(Signed)

CHARLES BANKHEAD.

Sc. Sc. Sc.

Inclosure in No. 16.

The Hon. Edward Livingston, to Charles Bankhead, Esq.

Department of State, Washington, July 21, 1832.

THE Undersigned, &c. will now have the honor to fulfil to Mr. Bankhead,

&c., the promise which he made, that as soon as the action of the Senate should be known, on the reference made to that body, of the decision of the King of the Netherlands, the Undersigned would answer Mr. Bankhead's note of 20th December last.

His Britannic Majesty's Government is too well acquainted with the division of powers in that of the United States, to make it necessary to enter into any explanation of the reasons which rendered it obligatory on the President to submit the whole subject to the Senate for its advice. The result of that application is a determination on the part of the Senate, not to consider the decision of the King of the Netherlands as obligatory, and a refusal to advise and consent to its execution. But they have passed a resolution advising, "the President to open a new negotiation with His Britannic Majesty's Government, for the ascertainment of the boundary between the possessions of the United States and those of Great Britain, on the north-eastern frontier of the United States, according to the Treaty of Peace of 1783." This resolution was adopted on the conviction felt by the Senate that the Sovereign Arbitrator had not decided the question submitted to him, or had decided it in a manner unauthorized by the submission.

It is not the intention of the undersigned to enter into an investigation of the argument which has led to this conclusion, the decision of the Senate precludes it, and the object of this communication renders it unnecessary;—but it may be proper to add that no question could have arisen as to the validity of the decision, had the Sovereign Arbitrator determined on, and designated any boundary, as that which was intended by the Treaty of 1783. He has not done so, not being able, consistently with the evidence before him, to declare that the line he has thought the most proper to be established, was the line intended by the Treaty of 1783; he seems to have abandoned the character of arbitrator, and assumed that of mediator, advising both parties that a boundary which he describes, should be accepted, as one most convenient to them. But this line trenches, as is asserted by one of the States of the Union, upon its territory, and that State controverts the constitutional power of the United States to circumscribe its limits without its assent. If the decision had indicated this line as the boundary designated by the Treaty of 1783, this objection could not have been urged, because then, no part of the territory to the north or the east of it, could be within the state of Maine. And however the United States, or any individual State might think itself aggrieved by the decision, as it would in that case have been made in conformity to the submission, it would have been carried into immediate effect. The case is now entirely different, and the necessity for further negotiation must be apparent to adjust a difference which the Sovereign arbitrator has, in the opinion of a co-ordinate branch of our executive power, failed to decide. That negotiation will be opened and carried on by the President with the sincerest disposition to bring to an amicable, speedy, and satisfactory conclusion, a question which might otherwise interrupt the harmony which so happily subsists between the two countries, and which he most earnestly wishes to preserve.

The Undersigned is instructed to say, that even if the negotiators of the two parties are unable to agree on the true line designated by the Treaty of 1783, means will probably be found of avoiding the constitutional difficulties that have hitherto attended the establishment of a boundary, more convenient to both parties than that designated by the Treaty, or that recommended by His Majesty the King of the Netherlands, an arrangement being now in progress with every probability of a speedy conclusion, between the United States and the State of Maine, by which the Government of the United States will be clothed with more ample powers, than it has heretofore possessed, to effect that end. Should a negotiation be opened on this principal point, it will naturally embrace, as connected with it, the right of navigation of the river St. John, an object of scarcely less importance to the convenience and future harmony of the two nations, than the designation of the boundary, it being the wish of the President, and, as he has the best reason to believe, that of His Britannic Majesty's Government, to remove all causes for misunderstanding between the two countries, by a previous settlement of all points on which they might probably arise.

Presuming that the state of things produced by the resolution of the Senate above referred to, and the desire expressed by the President to open, carry on, and conclude the negotiation recommended by that body, in the most frank and amicable manner, will convince His Britannic Majesty's Government of the ne-

necessity of meeting the offers now made with a correspondent spirit, the undersigned is directed to propose for consideration the propriety of carrying on the negotiation at this place. The aid which the negotiators on both sides would derive, from being in the vicinity of the territory in dispute, as well as the information with respect to localities from persons well acquainted with them, which they might command, are obvious considerations in favour of this proposition.

Until this matter shall be brought to a final conclusion, the necessity of refraining, on both sides, from any exercise of jurisdiction, beyond the boundaries now actually possessed, must be apparent, and will no doubt be acquiesced in on the part of the authorities of His Britannic Majesty's provinces, as it will be by the United States.

C. Bankhead, Esq.

The undersigned, &c.

(Signed)

EDW. LIVINGSTON.

No. 17.

Charles Bankhead, Esq. to Viscount Palmerston.—(Received August 25.)

(Extract.)

Washington, July 28, 1832.

I TAKE the liberty of transmitting to your Lordship an account of the proceedings which took place in the Senate in their executive capacity, during the discussion upon the award of the King of the Netherlands.

Your Lordship will observe by the perusal of this paper, that the Senate was divided into three parties: the first composed of those who desired the acceptance of the award; among them was Mr. Tazewell, the Chairman of the Committee of Foreign Relations; the second was composed of those who thought that the question did not come under the cognizance of the Senate; and the third party included those who were opposed to the acceptance of the award.

The result of this has been the rejection of the measure, and an invitation to the President to enter anew into negotiation with His Majesty's Government upon the whole question of boundary.

The unfortunate wording of that instrument, which might imply mediation as well as decision, has given a strong hold to those who were opposed to the measure.

I have no reason to doubt that the President desired the fulfilment of the award.

No. 18.

A. Vail, Esq., to Viscount Palmerston.—(Received August 24.)

304, Regent Street, August 20, 1832.

THE Undersigned, Chargé d'Affaires of the United States of America at the Court of His Britannic Majesty, has the honour, in compliance with instructions recently received from his Government, to inform the Right Honourable Lord Viscount Palmerston, His Majesty's Principal Secretary of State for Foreign Affairs, that the Senate of the United States, to whom the President had, in the constitutional discharge of his functions, referred the decision of the King of the Netherlands upon the question submitted to him by the two Governments respecting the boundary of their respective territories, for its advice thereon,—has determined to consider the decision referred to, as not obligatory on the part of the United States, and refused to advise and consent to its being carried into effect.

The enclosed copy of a note addressed on the 21st ultimo, by the Secretary of State of the United States to His Majesty's Chargé d'Affaires at Washington, which the Undersigned is directed to lay before His Majesty's Government, and to which he begs leave to refer Lord Palmerston, will acquaint his Lordship with a resolution passed at the same time by the Senate of the United States, advising the executive to open a new negotiation with the British Government, for the purpose of determining the boundary in question,—with the desire of the President that such a negotiation may speedily be entered upon, and with his views and wishes as to the means of bringing it to a satisfactory termination.

In submitting the above for the consideration of His Majesty's Government, the Undersigned avails himself of the occasion to discharge the pleasing duty assigned to him, of assuring Lord Palmerston of the sincerity of the President's intention to enter upon the proposed negotiation with the most conciliatory disposition, which he flatters himself, will be met on the part of His Majesty's Government, by a corresponding spirit, and by a desire equal to that which he entertains of removing from the harmonious intercourse now so happily subsisting between the two countries, all possible causes of future contention or unfriendly feeling.

The Undersigned, &c.

(Signed)

A. VAIL.

Viscount Palmerston, G. C. B.

&c. &c. &c.

No. 19.

Viscount Palmerston to A. Vail, Esq.

Foreign Office, August 27, 1832.

Sir,

THE Undersigned, &c. has the honour to acknowledge the receipt of the note of Mr. Vail, &c., dated the 20th instant, announcing that the Senate of the United States have determined to consider the decision of the King of the Netherlands upon the question submitted to him by the Governments of His Majesty and of the United States, relative to the boundary of their respective territories, as not obligatory on the part of the United States, and that they have refused to advise and consent to its being carried into effect; in consequence of which, the Government of the United States invite His Majesty's Government to open a new negotiation for the purpose of determining the boundary in question.

The undersigned has laid Mr. Vail's communication before the King, and will not fail to inform Mr. Vail as soon as His Majesty's Government have come to a decision upon the important subject to which it relates.

The Undersigned, &c.

(Signed)

PALMERSTON.

A. Vail, Esq.

&c. &c. &c.

No. 20.

Charles Bankhead, Esq. to Viscount Palmerston.—(Received January 2, 1833.)

(Extract.)

Washington, December 5, 1832.

I HAVE the honour to transmit to your Lordship a copy of the message of the President of the United States, which was communicated to both Houses of Congress on the 4th instant.

With respect to the north-east boundary, of course the President could say but little. He merely states, that early attention had been promised on the part of His Majesty's Government to the subject, on their reception of the decision of the Senate upon the award of the King of the Netherlands.

The President has not failed on the present occasion to renew that expression of friendly feeling towards Great Britain, which he has invariably touched upon in his several messages to Congress.

Inclosure in No. 20.

Extract from the Message of the President.

THE question of our north-eastern boundary still remains unsettled. In my last annual message, I explained to you the situation in which I found that business on my coming into office, and the measures I thought it my duty to pursue for asserting the rights of the United States before the Sovereign, who had been chosen by my predecessor to determine the question; and also the manner in which he had disposed of it. A special message to the Senate in

their executive capacity, afterwards brought before them the question, whether they would advise a submission to the opinion of the Sovereign Arbitrator. That body having considered the award as not obligatory, and advised me to open a farther negotiation, the proposition was immediately made to the British Government: but the circumstances to which I have alluded have hitherto prevented any answer being given to the overture. Early attention, however, has been promised to the subject, and every effort on my part will be made for a satisfactory settlement of this question, interesting to the Union generally, and particularly so to one of its members.

No. 21.

Viscount Palmerston to Sir C. R. Vaughan.

Sir,

Foreign Office, February 25, 1833.

AMONG the questions upon which it will be your duty to enter into early communication with the American Government, on your return to your post at Washington, there is none in which His Majesty's Government feel a deeper interest, than that which relates to the long disputed claims of the two countries, with respect to the boundary between the north-east portion of the United States, and His Majesty's colonial possessions in North America.

His Majesty had indulged a confident hope, that the means of adjusting a question which had been the object of fruitless negotiation during a long series of years, and the settlement of which is essential to the preservation of a good understanding between the two countries, had at length, been attained, by the reference to arbitration formally agreed upon and regulated by the Convention of the 29th September, 1827; and His Majesty, influenced by an earnest desire to promote the harmony, so happily subsisting between His Government and that of the United States, no less than by his sense of the obligations imposed upon him, in common with the American Government, by that Convention, did not hesitate to declare his acceptance of the decision of the Arbitrator, notwithstanding the large sacrifice, which it involved, of territory, heretofore considered as belonging to the British Crown.

It was not, therefore, without very deep concern, that His Majesty saw his hopes frustrated, and the sacrifice which he had been willing to make rendered unavailing, by the communication contained in the note addressed by the American Secretary of State to the Chargé d'Affaires of His Majesty at Washington, dated the 21st July, 1832.

By that note, to which I have now to refer you, His Majesty's Government are informed, that the Senate of the United States, to which body the President, as required by the constitution, had submitted the question for its advice, had determined not to consider the decision of the King of the Netherlands upon the line of boundary, which was submitted to his arbitration, "as obligatory;" and that they had refused to advise and consent to its execution, on the ground that His Netherland Majesty had abandoned the character of arbitrator, and had assumed that of mediator; and that he had not decided the question submitted to him, or had decided it in a manner unauthorized by the terms of the reference.

The American Secretary of State observes that the validity of the decision would not have been questioned, had the arbitrator determined upon, and designated any boundary, as that which was intended by the Treaty of 1783. But that the line which the King of the Netherlands advises both parties to accept, as one most convenient to them, trenches on the State of Maine, which State denies the constitutional power of the General Government to circumscribe its limits without its assent.

Mr. Livingston goes on to say, that the necessity for farther negotiation had thus become apparent, to adjust a difference which the Arbitrator had failed to decide; and that the President therefore, in conformity with a resolution of the Senate, proposes to open a new negotiation with His Majesty's Government, "for the ascertainment of the boundary between the possessions of the United States and those of Great Britain, on the north-eastern frontier of the United States, according to the Treaty of Peace of 1783."

His Majesty's Government regret, that they cannot discover in this proposal any probable means of arriving at a settlement of this difficult question. It appears to His Majesty's Government to be utterly hopeless to attempt to find

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Mr. Livingston does indeed suggest in a subsequent part of his note, the practicability of a negotiation on a broader principle. He states that, if the negotiators of the two parties should be unable to agree on the true line designated by the Treaty of 1783, "means will probably be found of avoiding the constitutional difficulties that have hitherto attended the establishment of a boundary more convenient to both parties than that designated by the Treaty, or than that recommended by His Majesty the King of the Netherlands;" and he adds, "that an arrangement is now in progress with every probability of a speedy conclusion, between the United States and the State of Maine, by which the Government of the United States will be clothed with more ample powers than it has heretofore possessed, to effect that end."

His Majesty's Government will eagerly avail themselves of any probable chance of bringing to a satisfactory settlement, a question of such vital consequence to the harmony and good understanding between the two Governments; and I am to instruct you to lose no time in endeavouring to ascertain from Mr. Livingston, in the first place, what is the principle of the plan of boundary, which the American Government appear to contemplate as likely to be more convenient to both parties than those hitherto discussed; and, secondly, whether any, and what arrangement, such as Mr. Livingston alludes to, for avoiding the constitutional difficulty, has yet been concluded between the General Government and the State of Maine.

It is necessary that His Majesty's Government should be informed of the basis on which it is proposed to negotiate, before they can either entertain the proposal, or decide upon the instructions, which it may be necessary to give to the Minister, to whom the negotiation, when agreed to, may be entrusted; and it is especially essential, that His Majesty should be previously assured, that the President of the United States will possess the power of carrying into full effect his part of any engagement which may be concluded betwixt the Plenipotentiaries of the two Governments.

You will assure the American Minister, in making these communications to him, that, if His Majesty's Government shall be enabled, upon receiving satisfactory explanations on the points which I have just mentioned, to acquiesce in the proposition of the American Government, they will enter upon the negotiation which may then be opened, in the most friendly spirit and with the most sincere desire to arrive at a settlement mutually beneficial to both countries; and you may farther assure Mr. Livingston, that His Majesty's Government entirely concur with that of the United States, in the principle of continuing to abstain, during the progress of the negotiation, from extending the exercise of jurisdiction within the disputed territory, beyond the limits within which it has hitherto been usually exercised by the authorities of either party.

It is due, however, to the frankness which His Majesty desires should characterize every communication between the British and American Governments, that I should not conclude this despatch without distinctly declaring to you, in answer to that part of Mr. Livingston's note, in which he expresses for the first time, the wish of the American Government to connect with the discussion of the boundary question, that of the navigation of the river St. John, that it will be impossible for His Majesty to admit the principle upon which it is attempted to treat these two questions as necessarily connected with each other. Whatever might be the eventual decision of His Majesty upon the latter question, if treated separately, and whatever may be His Majesty's disposition to promote the harmony so happily subsisting between the two countries, by any arrangements which might tend to the convenience of the citizens of the United States, without being prejudicial to the essential interests of his own subjects, His Majesty cannot admit any claim of right on the part of the citizens of Maine to the navigation of the St. John, nor can he consider a negotiation on that point, as necessarily growing out of the question of boundary.

His Majesty cannot therefore consent to embarrass the negotiation respecting the boundary, by mixing up with it a discussion respecting the navigation of the river St. John, as an integral part of the same question.

I am, &c.

Rt. Hon. Sir C. R. Vaughan.
&c. &c. &c.

(Signed) PALMERSTON.

P.S.—You will communicate the substance of this despatch to the American Minister, by a note, in answer to that which Mr. Livingston addressed to Mr. Bankhead on the 21st July, 1832.

No. 22.

A. Vail, Esq., to Viscount Palmerston.—(Received April 4.)

304, Regent Street, April 3, 1833.

IN a note which the Undersigned, Chargé d'Affaires of the United States of America, had the honor to address, on the 20th of August last, to the Right Honorable Lord Viscount Palmerston, His Majesty's Principal Secretary of State for Foreign Affairs, he laid before his Lordship by direction of his Government, a proposition to open a negotiation for the purpose of determining certain points of the line of boundary between the United States and His Majesty's North American colonies. On the 27th of the same month, Lord Palmerston had the goodness to apprise the Undersigned, by a note of that date, that the subject had been laid before the King, and that the decision of His Majesty's Government upon it, would be made known to him as soon as adopted. In subsequent conversations with which the Undersigned was honored by Lord Palmerston, his Lordship stated that His Majesty's Ministers felt some hesitation in coming to a determination with regard to the proposition of the American Government, for want of more precise information than the Undersigned had it in his power to afford, respecting certain points which would necessarily come up for discussion in the course of the proposed negotiation, and appeared to entertain a desire that such information should be supplied. The Undersigned having communicated to his Government a copy of the written answer and the import of the verbal remarks of Lord Palmerston, has recently received from the Secretary of State of the United States, an answer to his several despatches upon the subject, by which he is directed to state to Lord Palmerston, that the President is still anxiously waiting for the promised decision of the British Government, and to add the following observations, which, it is hoped, will serve to remove the difficulties which appear to have been viewed by Lord Palmerston as standing in the way of it.

When the Secretary of State of the United States proposed that the contemplated negotiation should be carried on at Washington, his intention, as will appear on reference to his note to Mr. Bankhead of the 21st July, 1832, of which a copy accompanied that of the Undersigned of the 20th of August, was simply to suggest a place which, as affording many desirable facilities for the proposed object, would, he thought, prove equally agreeable to both parties: he now states more distinctly, that he never meant it as a point to be insisted upon on the part of the United States; and he instructs the Undersigned to say to Lord Palmerston, that, inasmuch as he intended it to be left to the option of the parties, if His Majesty's Government should entertain a preference for some other place, the President, animated by a sincere disposition to put an end to this and every other cause of difference between the two countries, is ready to instruct His Minister to enter upon the proposed negotiation with an anxious desire that it should be carried to an amicable close, on terms which will require no sacrifice of national honor or interest from either of the parties.

With regard to the enquiries made by Lord Palmerston in conversation with the Undersigned, respecting the nature of the propositions to be brought forward on the part of the United States, in relation to the boundary itself, the character of the arrangement which might be effected with the State of Maine, and the wishes of the American Government respecting the navigation of the river St. John, the Undersigned is instructed to say that these being the very points which are to be made the subject of negotiation, after the parties shall have agreed to open one, they can scarcely require to be developed, as a

preliminary, on the simple question, whether the parties are willing to negotiate : and, that to enter upon the consideration of those points, at the present stage of the business, farther than has, in general terms, been done in the overture made on the part of the United States, would be to anticipate the negotiation itself. In laying these observations before His Majesty's Government, the Undersigned is further instructed to state to Lord Palmerston, that the proposition submitted by the United States was made, and is now repeated, under the belief that an affirmative answer to it will lead to such an adjustment of this long pending subject of difference, as will prove satisfactory to both parties.

The Undersigned, therefore, encouraged by the friendly assurances and explanations, which, by order of the President, he has the honor to present for the early and favorable consideration of His Majesty's Government, indulges the hope that the difficulties which appear to have prevented an earlier decision upon the proposition of the United States will now be removed, and requests that he may, with as little delay as is consistent with the importance of the subject, be made acquainted, for the information of his own Government, with the determination of that of His Britannic Majesty.

The Undersigned, &c.

Viscount Palmerston, G.C.B.
&c. &c. &c.

(Signed) A. VAIL.

No. 23.

Sir C. R. Vaughan to Viscount Palmerston.—(Received May 14.)

My Lord,

Washington, April 13, 1833.

I RECEIVED yesterday your Lordship's despatch of February 25, directing me to enter into communication with the American Government respecting the long disputed claims of the two countries, with regard to the boundary between the north-eastern portion of the United States and His Majesty's colonial possessions in North America, and authorizing me to submit the contents of your Lordship's despatch to Mr. Livingston, in answer to his note of the 21st July, 1832.

I requested a conference with Mr. Livingston, and I this day read over to him your Lordship's despatch, and, in conformity with my instructions, I promised to communicate the contents in an official note.

I have little further to report, as the result of my first interview upon the question of boundary, than that my communication was received in the same spirit of frankness and conciliation in which it was made; and I shall await a development of the views of this Government, with regard to the line of boundary, after time has been given for deliberation upon the contents of your Lordship's despatch, which contains the clearest instructions for my conduct, and, in my opinion, the best possible answer to the note of the American Secretary of State, of the month of July last.

I have the honour to be, &c.

(Signed) CHAS. R. VAUGHAN.

Viscount Palmerston, G.C.B.
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No. 24.

Sir C. R. Vaughan to Viscount Palmerston.—(Received June 8.)

(Extract.)

Washington, May 13, 1833.

IN my despatch of April 13, I stated that I should communicate to the Secretary of State of the United States the instructions, *in extenso*, which I had received upon the boundary question, and I have the honour to enclose a copy of the note which I addressed to Mr. Livingston, which is a transcript only of your Lordship's despatch of February 25.

To that note I have received an answer from Mr. Livingston, a copy of which I have the honour to enclose, accompanied with a copy of my note to him, containing observations upon the means which he has suggested of settling the boundary question.

Those means consist in a renewal of negotiation, and, in the event of its failing, a recurrence to commissions of boundary, either consisting of an equal number of commissioners, attended by an umpire, to be selected by a friendly Sovereign, with a power to decide, finally, all disputed points; or a commission of the most skilful persons in Europe, to be selected by a friendly Sovereign, and to be attended by agents appointed by both parties, in their view and survey of the country, to decide peremptorily the conflicting claims.

I am happy to observe, that the Government of the United States has consented "not now to insist" on the navigation of the St. John, which Mr. Livingston states was only brought forward as forming part of a system of compensation in settling a more convenient boundary.

With regard to the renewal of negotiation proposed by Mr. Livingston, I must first call your Lordship's attention to the declaration in his note, that the Government of the United States "in the present state of things can only treat" "on the basis of the establishment of the boundary presented by the Treaty," the arrangement having failed which was announced to be in progress last summer, with the State of Maine, and which was to enable the General Government to treat for a more convenient boundary. It appears to me that to renew a negotiation, restricted to that basis, would be perfectly useless.

With regard to the commissions of boundary proposed by Mr. Livingston, they differ from those under the Vth Article of the Treaty of Ghent, in as much as they are to be attended by an umpire empowered to decide, at once, all disputed points; or a final decision is to be given by the commission of scientific persons, accompanied by agents of all the parties, for the purpose, I presume, of arguing any disputed points. I have ventured to express to Mr. Livingston my conviction, that His Majesty's Government would, with great reluctance, consent again to have recourse to commissions, after the delay, expence and unsatisfactory result of those under the Treaty of Ghent. The commissioners were then attended by agents, and they had the assistance of scientific persons, and their statements, when they disagreed, were finally submitted to their respective Governments.

The view partially developed by Mr. Livingston of deviating from the direct line from the sources of the St. Croix, I was afraid was meant to pledge the British Government to drawing a line to mountains eastward of the present supposed position of the highlands of the Treaty, which, though they may be a more decided feature in the country than the latter, could not be placed upon the boundary without allowing the Americans to trench upon the acknowledged possessions of His Majesty in New Brunswick.

Mr. Livingston, however, has called upon me, and explained more clearly the view which he had only partially developed in his note. According to his explanation, the line which he would propose to draw from the sources of the St. Croix River, would be carried to the left of the due north line, or westward, instead of to the right, or eastward towards New Brunswick, upon a supposition that at a point some fifty miles (according to a small defective map which he produced) westward of the position upon the St. Francis River, given to the United States by the decision of the King of the Netherlands, highlands may be found which would, as described in the Treaty of 1783, divide waters falling on the one side into the River St. Lawrence, and on the other, into the Atlantic. To ascertain this fact, Mr. Livingston would propose that the two Governments should appoint a commission, in either of the forms suggested in his note.

Mr. Livingston called upon me, as I understood, after having submitted to the President my observations upon his note of the 30th April, and he stated to me, that after the proceedings in the Senate last year, the President was restricted to tracing a line of boundary according to the terms of the Treaty of 1783.

I can only at present give to your Lordship an account of my conversation with Mr. Livingston this day; and as I found that he was to leave Washington for several days, and that I could not expect a written statement of his proposal, the necessity of which I impressed upon him, till his return, I lose no time in making your Lordship acquainted with what has passed.

There certainly seems to be a disposition on the part of the President and his Secretary of State to settle the disputed question of boundary.

Inclosure 1 in No. 24.

Sir C. R. Vaughan to the Hon. Edward Livingston.

Washington, April 14, 1833.

THE Undersigned, &c., having been directed by his Government to open, upon his arrival at Washington, a communication with the Government of the United States, upon the question which relates to the long disputed claims of the two countries with respect to the boundary between the north-eastern portion of the United States, and His Majesty's colonial possessions in North America, he has already made Mr. Livingston acquainted with the instructions which he has received upon this question on which His Majesty's Government feels so deep an interest, and the Undersigned is authorized by his Government to lay openly, and without reserve, the nature of those instructions in an official note to the Secretary of State, as they contain the answer which His Majesty's Government have decided to make to the note of Mr. Livingston, of the month of July last.

His Majesty had indulged a confident hope, that the means of adjusting a question which had been the object of fruitless negotiation during a long series of years, and the settlement of which, is essential to the preservation of a good understanding between the two countries, had, at length been attained by the reference to arbitration formerly agreed upon and regulated by the Convention of the 29th September, 1827; and His Majesty, influenced by an earnest desire to promote the harmony so happily subsisting between his Government and that of the United States, no less than by his sense of the obligations imposed upon him, in common with the American Government, by that Convention, did not hesitate to declare his acceptance of the decision of the arbitrator, notwithstanding the large sacrifice which it involved of territory heretofore considered as belonging to the British Crown. It was not therefore without very deep concern, that His Majesty saw his hopes frustrated, and the sacrifice which he had been willing to make, rendered unavailing by the communication contained in the note addressed by the American Secretary of State to the Chargé d'Affaires of His Majesty at Washington, dated the 21st July, 1832.

By that note His Majesty's Government are informed, that the Senate of the United States, to which body the President, as required by the Constitution, had submitted the question for its advice, had determined not to consider the decision of the King of the Netherlands upon the line of boundary which was submitted to his arbitration "as obligatory," and that they had refused to advise and consent to its execution, on the ground that His Netherlands Majesty had abandoned the character of arbitrator, and had assumed that of mediator; and that he had not decided the question submitted to him, or had decided it in a manner unauthorized by the terms of the reference.

The American Secretary of State observes, that the validity of the decision would not have been questioned, had the arbitrator determined upon and designated any boundary, as that which was intended by the Treaty of 1783. But that the line, which the King of the Netherlands advises both parties to accept as one most convenient to them, trenches on the state of Maine, which state denies the constitutional power of the General Government to circumscribe its limits without its assent.

The necessity for further negotiation, according to Mr. Livingston's note, had thus become apparent, to adjust a difference which the arbitrator had failed to decide; and that the President, therefore, in conformity with a resolution of the Senate, proposes to open a new negotiation with His Majesty's Government, "for the ascertainment of the boundary, between the possessions of the United States and those of Great Britain, on the north-eastern frontier of the United States, according to the Treaty of Peace 1783."

His Majesty's Government regret that they cannot discover in this proposal any probable means of arriving at a settlement of this difficult question. It appears to His Majesty's Government to be utterly hopeless to attempt to find out, at this time of day, by means of a new negotiation, an assumed line of boundary, which successive negotiators, and which commissioners employed on the spot have, during so many years, failed to discover; and which, finally, an impartial arbitrator, furnished by each claimant with every fact and argument that had been adduced on either side of the question, had declared the impossibility of tracing, in conformity with the description contained in the Treaty of 1783.

In a subsequent part of Mr. Livingston's note, the practicability is suggested of a negotiation on a broader principle. He states, that if the negotiators of the two parties should be unable to agree on the true line, designated by the Treaty of 1783, "means will probably be found of avoiding the constitutional difficulties that have hitherto attended the establishment of a boundary, more convenient to both parties than that designated by the Treaty, or than that recommended by His Majesty the King of the Netherlands;" and he adds, that "an arrangement is now in progress, with every probability of a speedy conclusion, between the United States and the State of Maine, by which the Government of the United States will be clothed with more ample powers, than it has heretofore possessed, to effect that end."

His Majesty's Government will eagerly avail themselves of any probable chance of bringing to a satisfactory settlement a question of such vital consequence to the harmony and good understanding between the two Governments; and the Undersigned is instructed to lose no time in endeavouring to ascertain from Mr. Livingston, in the first place, what is the principle of the plan of boundary which the American Government appear to contemplate as likely to be more convenient to both parties than those hitherto discussed; and secondly, whether any, and what arrangement, such as Mr. Livingston alludes to, for avoiding the constitutional difficulty, has yet been concluded between the General Government and the State of Maine.

It is necessary that His Majesty's Government should be informed of the basis on which it is proposed to negotiate, before they can either entertain the proposal, or decide upon the instructions which it may be necessary to give to the Minister to whom the negotiation, when agreed to, may be entrusted; and it is especially essential, that His Majesty should be previously assured, that the President of the United States will possess the power of carrying into full effect his part of any engagement which may be concluded between the Plenipotentiaries of the two Governments.

The Undersigned is directed to assure the American Minister, in making these communications to him, that if His Majesty's Government shall be enabled, upon receiving satisfactory explanations on the points which have just been mentioned, to acquiesce in the proposition of the American Government, they will enter upon the negotiation, which may then be opened in the most friendly spirit, and with the most sincere desire to arrive at a settlement mutually beneficial to both countries; and he is further to assure the Secretary of State, that His Majesty's Government entirely concur with that of the United States, in the principle of continuing to abstain, during the progress of the negotiation, from extending the exercise of jurisdiction within the disputed territory beyond the limits within which it has hitherto been usually exercised by the authorities of either party.

It is due, however, to the frankness which His Majesty desires should characterize every communication between the British and American Governments, that the Undersigned has received the orders of his court distinctly to declare, in answer to that part of Mr. Livingston's note, in which he expresses, for the first time, the wish of the American Government to connect, with the discussion of the boundary question, that of the navigation of the river St. John, that it will be impossible for His Majesty to admit the principle upon which it is attempted to treat these two questions as necessarily connected with each other. Whatever might be the eventual decision of His Majesty upon the latter question, if treated separately; and whatever may be His Majesty's disposition to promote the harmony, so happily subsisting between the two countries, by any arrangements which might tend to the convenience of the citizens of the United States, without being prejudicial to the essential interests of his own subjects, His Majesty cannot admit any claim of right on the part of the citizens of Maine to the navigation of the St. John; nor can he consider a negotiation on that point as necessarily growing out of the question of boundary.

His Majesty cannot, therefore, consent to embarrass the negotiation respecting the boundary, by mixing up with it a discussion respecting the navigation of the river St. John, as an integral part of the same question.

The Undersigned, &c.

(Signed) CHAS. R. VAUGHAN.

The Hon. Edward Livingston,
 &c. &c. &c.

Inclosure 2 in No. 24.

*The Hon. Edward Livingston to Sir C. R. Vaughan.**Department of State, Washington, April 30, 1833.*

THE Undersigned, &c. has had the honor to receive from Sir Charles Vaughan, &c., his note of the 14th instant, communicating the substance of the instructions given by His Britannic Majesty's Government, in relation to the disputed question of the boundary between the United States and the British Province of New Brunswick; and has laid the same before the President, who has directed the Undersigned to say, that he sees with great pleasure that the British Government concurs, with that of the United States, in the position, that His Netherland Majesty had not decided the question submitted to him, since by Sir C. Vaughan's note it is acknowledged, "that the arbitrator, furnished by each claimant with every fact and argument that had been adduced on either side of the question, had declared the impossibility of tracing, in conformity with the description contained in the Treaty of 1783," the boundary line in question; and as the determination of that line, according to the Treaty of 1783, was the only question submitted to the august arbitrator, and he having declared that he found it impossible to trace it in conformity with the Treaty, it follows, that his inability to decide the point submitted to him, leaves the high parties to the submission, precisely in the situation in which they were, prior to the selection of His Netherland Majesty to be the arbitrator between them; that is to say, they are thrown back to the Convention of the 29th September, 1827. By that Convention it was agreed to submit the question, which was the true boundary according to the Treaty of 1783, to the decision of an arbitrator to be chosen between them. The arbitrator selected having declared himself unable to perform the trust, it is as if none had been selected, and it would seem as if the parties to the submission were bound by their contract to select another; but this would be useless, if the position assumed by the Government of His Britannic Majesty be correct, "that it would be utterly hopeless at this time of day to attempt to find out, by means of a new negotiation, an assumed line of boundary, which successive negotiators, and which commissioners employed on the spot have, during so many years, failed to discover." The American Government, however, while they acknowledge that the task is not without its difficulties, do not consider its execution as hopeless. They still trust that a negotiation opened and conducted in a spirit of frankness, and with a sincere desire to put an end to one of the few questions which divide two nations, whose mutual interest it will always be to cultivate the relations of amity, and a cordial good understanding with each other, may, contrary to the anticipations of His Britannic Majesty's Government, yet have a happy result; but if this should unfortunately fail, other means, still untried, remain. It was, perhaps, natural to suppose, that negotiators of the two powers coming to the discussion with honest prejudices, each in favor of the construction adopted by his own nation, on a matter of great import to both, should separate without coming to a decision. The same observations may apply to commissioners, citizens, or subjects of the contending parties, not having an impartial umpire to decide between them: and, although the selection of a sovereign arbiter would seem to have avoided these difficulties, yet this advantage may have been more than counterbalanced by the want of local knowledge. All the disadvantages of these modes of settlement, heretofore adopted, might, as it appears to the American Government, be avoided, by appointing a new commission, consisting of an equal number of commissioners, with an umpire selected by some friendly Sovereign, from among the most skilful men in Europe, to decide on all points on which they disagree, or by a commission entirely composed of such men, so selected, to be attended in the survey and view of the country, by agents appointed by the parties. Impartiality, local knowledge, and high professional skill would thus be employed, which, although heretofore separately called into the service, have never before been combined for the solution of the question. This is one mode; and perhaps others might occur in the course of the discussion, should the negotiators fail in agreeing on the true boundary. An opinion, however, is entertained, and has been hereinbefore expressed, that a view of the subject, not hitherto taken, might lead to another and more favorable result.

A free disclosure of this view might, according to the dictates of ordinary diplomacy, with more propriety, perhaps, be deferred until those of His Britannic

Majesty's Government should be more fully known, or, at least, until that Government had consented to open a negotiation for determining the boundary; but the plain dealing with which the President desires, this and all his other communications with Foreign Governments to be conducted, has induced a development of the principle for the consideration of His Britannic Majesty's Government.

Boundaries of tracts and countries, where the region through which the line is to pass, is unexplored, are frequently designated by natural objects, the precise situation of which is not known, but which are supposed to be in the direction of a particular point of the compass. Where the natural object is found in the designated direction, no question can arise. Where the course will not touch the natural boundary, the rule universally adopted is, not to consider the boundary as one impossible to be traced; but to preserve the natural boundary, and to reach it by the nearest direct course. Thus, if after more accurate surveys shall have been made, it should be found that the north course from the head of the St. Croix should not reach the highlands, which answer the description of those designated in the Treaty of 1783,—then a direct line from the head of the St. Croix, whatever may be its direction to such highlands, ought to be adopted, and the line would still be conformable to the Treaty.

As this principle does not seem hitherto to have been adopted, it appears to the Government of the United States to offer to the commissioners, who may be appointed, the means of an amicable adjustment.

When the note of the Undersigned to Mr. Bankhead in July last, was written, reasonable hopes were entertained that the arrangement therein spoken of, by which the Government of the United States might be enabled to treat for a more convenient boundary, would, ere this, have taken place. The anticipations then entertained have not, as yet, been realized, and the Government of the United States can only, in the present state of things, treat on the basis of the establishment of the boundary presented by the Treaty.

As the suggestion in relation to the navigation of the St. John was introduced only in the view of its forming a part of the system of compensations in the negotiation for a more convenient boundary, if that of the Treaty of 1783 should be abandoned, it is not now insisted on.

In conclusion, the President has remarked with sincere pleasure in Sir C. Vaughan's note, the expression of a desire on the part of his Government, to cultivate and increase the harmony and good understanding which so happily subsist between the two countries, and to put an end to all questions that may, in the least degree, interrupt it, a disposition which is warmly reciprocated by the President.

The Undersigned, &c.

Right Hon. Sir C. R. Vaughan,
&c. &c. &c.

(Signed) EDWARD LIVINGSTON.

Inclosure 3 in No. 24.

Sir C. R. Vaughan to the Hon. Edward Livingston.

Washington, May 11, 1833.

THE Undersigned &c., has the honour to acknowledge the receipt on the 5th instant, of the note of the Secretary of State of the United States, dated the 30th April, in answer to the communication made by the undersigned, of the instructions which he has received from his Government, relative to the disputed boundary, and he begs leave to make some observations, before he submits it to the consideration of the British Government.

With regard to the entire concurrence of the British Government with that of the United States, in the position, that His Netherland Majesty has not decided the question submitted to him, because he had declared it impossible to trace the boundary according to the Treaty of 1783, though both Governments must agree in the impossibility of tracing a boundary line, by the defective description of it in that Treaty, the two Governments took very different views of the nature of the obligations which they had incurred in common, under the Convention of Arbitration. Great Britain felt bound to accept the award of the arbitrator, who suggested a line of boundary, having been unable to trace that described in the Treaty, notwithstanding that the acceptance, would cause a great sacrifice of territory,

hitherto considered as belonging to the British Crown. According to the note of Mr. Livingston of the 21st July, 1832, the Senate of the United States, "determined not to consider the decision of the King of the Netherlands as obligatory, and they refused to advise and consent to its execution."

This rejection of the decision of the arbitrator by the Government of the United States, has thrown the parties, as Mr. Livingston observes, into the situation in which they were, prior to the selection of His Netherlands Majesty to be the arbitrator between them. It may be observed also, that though the tracing of the boundary line according to the Treaty of 1783, appeared from the statements delivered by the respective parties, to be the principal object of arbitration, the King of the Netherlands was invited in general terms "to be pleased to take upon himself the office of arbitration of the difference between the two Governments."

It was a measure adopted in order to put an end to tedious and unsatisfactory negotiations which had occupied the attention of the two Governments for more than forty years, and by the VIIIth Article of the Convention it was agreed, "that the decision of the arbiter when given, shall be taken as final and conclusive, and shall be carried without reserve into immediate effect."

The Undersigned cannot but regret the rejection of the decision of the King of the Netherlands, when he sees throughout the note of Mr. Livingston, all the difficulties which attend the endeavours of the two Governments, actuated by the most frank and friendly spirit, to devise any reasonable means of settling this question.

Mr. Livingston seems to be persuaded that a renewed negotiation may yet have a happy result, and the Undersigned observes with satisfaction, that the Government of the United States has consented not now to insist upon the navigation of the St. John's River, a claim which the British Government refused to consider in connection with the boundary question.

But the arrangement in progress last summer having failed, which was to result in enabling the Government of the United States to treat for a more convenient boundary, that Government in the present state of things can only treat on the basis of the establishment of the boundary presented by the Treaty.

The Undersigned is convinced, that it is hopeless to expect a favourable result from a renewed negotiation upon that basis. With regard to Mr. Livingston's proposal, that in the event of negotiation failing, the two Governments may have recourse to a commission of boundary, composed of equal numbers selected by each party, to be attended by an umpire, chosen by a friendly Sovereign, to decide at once all disputed points,—or that a commission of some of the most skillful men in Europe should be selected by a friendly Sovereign, and should be sent to view and survey the disputed territory, attended by agents appointed by the parties,—the Undersigned can only express his conviction, that after the expence, delay, and unsatisfactory result of the commission of boundary under the Vth Article of the Treaty of Ghent, it must be with great reluctance that the British Government consents to have recourse to such a measure.

He does not conceive that it would be an easy task, to engage in such a service, all the impartiality, local knowledge, and high professional skill, "which it would be necessary to combine for the solution of the question" to be submitted, which either the umpire in one instance, or the commission of scientific persons in the other, were to decide peremptorily.

The Undersigned does not sufficiently comprehend the other view which Mr. Livingston has partially developed in his note, and which the latter conceives might lead to a more favourable result; it seems applicable to the manner in which the line due north from the sources of the St. Croix River may be drawn, in conformity with the Treaty of 1783, though not strictly according to the terms in which that Article is drawn up. The natural feature of the boundary which Mr. Livingston supposes to exist, and to which the line in question is to be drawn, it is presumed are the highlands mentioned in the Treaty, the fixing the position of which highlands has formed the principal difficulty hitherto in adjusting the boundary. A deviation from the direct north line laid down in the Treaty, might lead to an oblique line being drawn to mountains to the eastward of it, which would trench upon His Majesty's territories of New Brunswick.

The Undersigned does not however venture, with the imperfect knowledge which he has of all the bearings of the view developed by Mr. Livingston, to do more than suggest a doubt of its advantages. The rejection of the award of the

arbitrator, by the Government of the United States, revives to their full extent, the pretensions of Great Britain, and it becomes an object of great importance to put an end to this question of boundary; "one of the few questions," as Mr. Livingston observes, "which divide two nations, whose mutual interest it will always be, to cultivate the relations of amity and a cordial good understanding with each other."

It is the duty of the Undersigned to transmit to his Government immediately, the note of Mr. Livingston, but at the same time he cannot resist from inviting the Secretary of State of the United States, to offer, without waiting the result of that reference, some more prompt and effective measure for the settlement of the boundary than the renewal of a negotiation on an inadmissible basis, or recourse again to commissions of boundary, which though upon an improved plan, so far as the insuring of a final result may be concerned, are too complicated in their nature to bring about a speedy or a satisfactory decision.

The Undersigned, &c.,

The Hon. Edward Livingston,
 &c. &c. &c.

(Signed)

CHAS. R. VAUGHAN.

No. 25.

Sir C. R. Vaughan to Viscount Palmerston.—(Received June 27.)

(Extract.)

Washington, June 4, 1833.

BEFORE Mr. Livingston gave up the Department of State to Mr. McLane, he sent to me his promised explanation of the proposition for settling the boundary, which he partially developed in his note of 30th April, enclosed in my despatch of May 13.

I have the honour to enclose a copy of the note of Mr. Livingston, which will shew your Lordship that he conceives that a line drawn obliquely westward from the source of the St. Croix, instead of directly due north, which has alone been followed hitherto, in search of the highlands of the Treaty of 1783, may lead to highlands which shall answer the description in that Treaty of dividing waters falling into the Atlantic, from those falling into the river St. Lawrence, and thereby enable the President at once to fix that line as the boundary.

Mr. Livingston proposes that a joint commission, constituted in either of the modes he mentioned in his note of 30th April, should be sent to explore the country on the line, the general bearings of which he has described by a diagram which is contained in his note.

The Government of the United States being restricted to treat only upon the terms of the Treaty of 1783, on account of constitutional difficulties which both Mr. Livingston and Mr. McLane declare to be insurmountable, the proposition of Mr. Livingston may be received as shewing the anxious desire of the President to devise some mode by which the question of boundary may be finally settled.

It was proposed by Mr. Livingston in his note of 30th April, to have recourse to commissions, should a renewed negotiation fail to settle the question in dispute. The answer to the demand of the British Government for farther explanations, before they could entertain the offer of the President to open a new negotiation, is, that as the arrangements in progress last summer, to remove the constitutional difficulties, have not been made, the Government of the United States can treat only on the basis of the Treaty of 1783, which the British Government has stated to be hopeless and inadmissible;—a negotiation, therefore, between the two Governments, is not likely to take place.

It remains then for the British Government to decide whether it will accede to the proposition of Mr. Livingston. The relief which it offers from the restrictions imposed upon the President by constitutional difficulties, consists in drawing the line from the monument, westward, and obliquely, instead of due north; from whence it may be implied, that it would result in a more advantageous boundary to Great Britain, than that offered by the due north line, by the cession of the territory included in the angle formed by the direct and the oblique line.

When Mr. Livingston pointed out to me his imaginary line upon a small

map, I concluded that it would terminate north of the St. John, but far westward of the St. Francis River, thereby offering a more advantageous boundary to Great Britain than the line proposed by the King of the Netherlands. In a conversation since with Mr. McLane, and with a better map before us, I was induced to believe, that the special commission might rather be directed to explore, in search of highlands, the line of boundary laid down by the American commissioners under the Vth Article of the Treaty of Ghent. Great Britain might thus be placed, by accepting Mr. Livingston's proposition, in a worse position than that which they were willing to accept, by acquiescing as they thought they were bound to do, and at a great sacrifice of territory, in the award of the arbiter. In my answer, therefore, to the explanation of Mr. Livingston, a copy of which I have the honour to enclose, I have thought it right to enquire what may be the intended course to be pointed out to the special commission. The obscurity in which the position of the highlands still remains, throws some difficulty in the way of acceding to Mr. Livingston's proposed plan without farther explanation.

We cannot predict where our assent to this proposition may lead us. It is not probable that the Americans will ever be brought to consent to draw a line from the St. Croix, to the only point where the separation of waters can be found accurately in conformity with the Treaty. It is where the Chaudière which falls into the St. Lawrence, is separated from the Kennebec which falls into the Atlantic, westward of the sources of the St. John. If, however, it is true that the American Congress placed the highlands at the sources of the St. John, from the year 1779 to 1782, it is fair to conjecture that this was the position of the highlands contemplated by the commissioners who framed the Treaty of 1783.

In my note to Mr. McLane, acknowledging the receipt of Mr. Livingston's explanation, I have stated that the delay occasioned by a reference to His Majesty's Government imposes upon me the obligation of investigating, and calling for farther explanation, before I submit the proposition to your Lordship.

Constitutional difficulties, said to be insurmountable, restrict the President from treating for a boundary more satisfactory to both parties than the one suggested by the King of the Netherlands. The state of Maine chuses to insist upon the whole disputed territory having been vested by the Treaty of 1783, in the United States, according to the construction put upon that Treaty by the people of that State, to whose lot the territory will fall, it being situated on their frontier. Maine denies the power of Congress to dispose of any part of it, by an arrangement with Great Britain; and thus the proposed alteration in the mode of seeking the termination of the boundary according to Treaty, is the only concession we can expect at present from the General Government.

In my correspondence with the Department of State, since my return to Washington, upon the subject of boundary, I have been anxious to shew that it is hopeless to entertain the offer to negotiate, restricted as the American Government is, to an inadmissible basis. I have endeavored in my last note of the 31st May, which is enclosed, to shew that the line of boundary laid down by the negotiators in the Treaty, was imaginary, from their ignorance at that time of the actual geography of the country, which is proved by the numerous commissions which have been appointed since its conclusion, to ascertain what was the line which was laid down by them. A strict adherence to the acknowledged defects of that Treaty, must render the settlement of the boundary an interminable question.

I have stated that the rejection of the award of the arbiter by the Government of the United States leaves it to Great Britain to maintain the claims and pretensions to be found in the British statements laid before the arbiter. If we are to treat at any time for a conventional line of boundary, I am of opinion that the one best defined would be, from where a line due north from the St. Croix would strike the St. John's river, and thence along its right bank to its source. This line would fairly divide the disputed territory between the two parties, and Great Britain would not object to giving up some settlements made by the Americans, as I have been given to understand, upon the Connecticut River, which would have fallen into the possession of His Majesty, if the line of the King of the Netherlands had been accepted.

I do not know whether I shall receive from Mr. McLane any explanation of the presumed termination of the line to be explored by a special commission,

as proposed by Mr. Livingston, which may induce His Majesty's Government to accede to the proposition, encumbered as it is with a difficulty attending the selection of commissioners, and accompanied as it must be, with delay and expence. It must be recollected that it is made by the President in a spirit of conciliation; and should it fail to accomplish the object intended, the necessity of abandoning the defective description of the boundary in the Treaty of 1783, will be so obvious, that the restrictions upon the President must be got the better of, and the Government of the United States must agree to treat for a conventional boundary. This Government will not at present listen to any proposal which deviates from the terms of the Treaty of 1783.

Inclosure 1. in No. 25.

The Hon. Edward Livingston to Sir C. R. Vaughan.

Sir, *Department of State, Washington, May 28, 1833.*

IN the two conversations we have had, on the 13th and 27th instant, you requested some further developement of the propositions contained in my note of the 30th April.

The principal object of that note was to shew, that the failure of the several endeavors which had been made, to ascertain the true boundary between the United States and the British Provinces of New Brunswick and Lower Canada, ought not, as is thought by His Britannic Majesty's Government, to be attributed to any insuperable difficulty, but rather to the inefficiency of the means heretofore resorted to, in order to secure such a decision as should be binding on both parties, and to the want of attention by the commissioners and arbiter severally employed for that purpose, to an established rule in the settlement of boundaries.

The first point seems to be fully explained in my note above referred to, and I repeat, that the President will agree to either of the modes therein suggested, to secure a final decision of the question. The reasons why, under the present circumstances, he cannot undertake to negotiate upon any other basis than that of the Treaty of 1783, drawn from the nature of our Government, were fully explained to you in those conversations; and the probability of ascertaining the boundary according to that Treaty, by applying the principle, to which I perhaps too briefly alluded in my note, was farther developed. That you may present it in a more precise form to your Government, I now repeat the substance of my observations.

The boundary as far as the head of the St. Croix is ascertained and agreed upon by both nations. The monument erected there is then a fixed point of departure. From thence we have a two-fold description of boundary; a line in a certain direction, and a natural object to which it was supposed a line in that direction would lead, "A line from the source of the river St. Croix directly north," and "the highlands which divide the waters that flow into the Atlantic Ocean, from those which flow into the river St. Lawrence." The American Government have believed that these two descriptions would coincide, that is to say, that the highlands designated by the Treaty, would be reached by a north line drawn from the head of the St. Croix; they make no pretensions farther east than that line, but if, on a more accurate survey, it should be found that the north line mentioned in the Treaty, should pass east of the highlands therein described, and that they should be found at some point further west, then the principle to which I refer would apply, to wit, that the direction of the line to connect the two natural boundaries, must be altered so as to suit their ascertained positions. Thus in the annexed diagram, suppose A. the monument at the head of the St. Croix, A. B. the north line drawn from thence. If the highlands described in the Treaty should be found in the course of that line, both the descriptions in the Treaty would be found to coincide, and the question would be at an end. If on the contrary those highlands, should be found at C. or D., or at any other point west of that line, then the eastern boundary of the United States would be the line A. C., or A. D., or any other line drawn directly from the point A., to the place which should be found to answer the description of the highlands mentioned in the Treaty.

This being fully understood, the President is willing, in order to simplify the operation, that the commission shall be restricted to the simple question,

of determining the point designated by the Treaty as the highlands which divide the waters, to which point a strait line shall be drawn from the monument: and that this line shall, as far as it extends, form part of the boundary in question. That they shall then designate the course of the line along the highlands, and fix on the point designated as the north-westernmost head of the Connecticut River.

It will be obvious to you, Sir, that until a survey and decision shall be had, in one of the modes pointed out in my note, or in some other to be agreed on, the President cannot designate any line which he would be willing to adopt as the boundary; but he directs me to repeat his firm persuasion, that a speedy and satisfactory arrangement may be made, by a negotiation carried on by both parties in the spirit of conciliation, by which he is actuated, and which he has not the least doubt, will direct the Government of His Britannic Majesty.

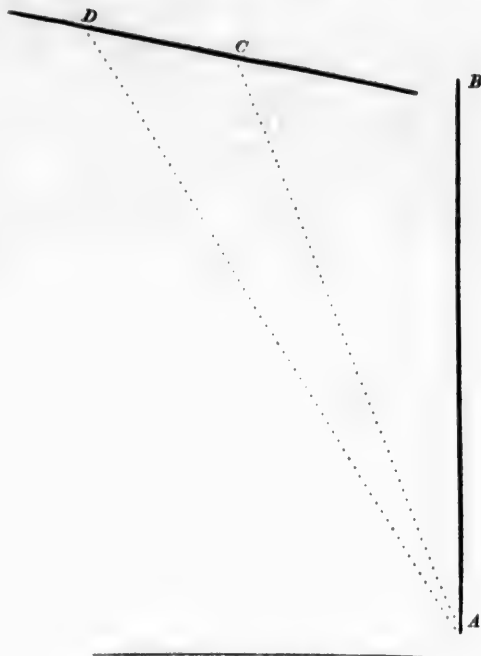
I have the honor to be, &c.

Rt. Hon. Sir C. R. Vaughan.

(Signed)

EDWARD LIVINGSTON.

Sec. Sec. Sec.



Inclosure 2. in No. 25.

Sir C. R. Vaughan to the Hon. Louis McLane.

Washington, May 31, 1833.

THE Undersigned, &c., has the honour to acknowledge the receipt of a note from Mr. Livingston, dated 28th May, previously to the appointment of Mr. McLane as Secretary of State, for the United States, explaining a proposition made by the former, in a note dated 30th April, relative to a new manner in which the boundary line might be traced, between the possessions of His Majesty and those of the United States.

The Undersigned observes with great satisfaction, the desire of the Government of the United States, as manifested in the proposal of Mr. Livingston, to devise some mode by which the question of boundary may be finally settled, but he at the same time regrets, that he cannot anticipate the favourable result expected by Mr. Livingston, should the two Governments adopt his proposal.

The Undersigned is lead to believe, after the communications which he has lately had, both with Mr. Livingston and Mr. McLane, that insuperable constitutional difficulties impose upon the Government of the United States, a restriction to treat only of a line of boundary according to the terms of the Treaty of 1783; that the only deviation, therefore, which can be admitted in tracing the boundary from the strict terms of the Treaty, is an abandonment of the direct due north line from the St. Croix, which has been hitherto followed in search of the highlands of the Treaty, and a permission to be given to a joint commission (to be sent expressly to examine the country) to follow an oblique line to the westward of the direct north line, until they shall meet with highlands answering the description given of them in the Treaty, as dividing waters falling into the Atlantic, from those which fall into the river St. Lawrence. A line drawn to them wherever they may be found, from the monument at the source of the St. Croix, would be such a compliance with the description of the boundary laid down in the Treaty, as to remove all constitutional difficulties in the way of the Government of the United States, and enable it to fix that line as the line of boundary.

It is not for the Undersigned to discuss the nature of the constitutional difficulties mentioned by Mr. Livingston. It is to be lamented that they are stated to be insurmountable, and that the proposition of Mr. Livingston, after a discussion which has occupied the two Governments, from time to time, for upwards of forty years, is the only offer which the British Government can expect to receive from the Government of the United States. It appears to the Undersigned that the time has now arrived, when this perplexed and hitherto interminable question, can only be set at rest by an abandonment of the defective description of boundary contained in the Treaty, by the two Governments mutually agreeing upon a conventional line of boundary, more convenient to both parties, than those insisted upon by the commissioners of boundary, under the Vth Article of the Treaty of Ghent, or the line suggested by the King of the Netherlands.

The proposition of Mr. Livingston very justly provides against any deviation eastward from the direct north line from the St. Croix, but the operation which it contemplates is still so restricted to the terms of the Treaty, that the basis of it is the same as that which the Undersigned has been instructed by his Government to inform the Government of the United States, it was hopeless to negotiate upon. The lines of boundary laid down by the commissioners who framed the Treaty of 1783, may fairly be considered as imaginary, arising from their ignorance, at the time, of the actual geography of the country. The point of departure of the boundary line was not settled until upwards of ten years after it had been so confidently laid down in the Treaty, when a commission under the Treaty of 1794, ascertained what river was to be considered as the St. Croix. In 1814, no less than four commissions were appointed under the Treaty of Ghent, to discover and trace as many portions of the line of boundary laid down in the Treaty of 1783.

The point of departure of the line to be traced according to the proposition of Mr. Livingston is clearly established, but the point at which it is to terminate is left in doubt, and to be decided by the special commission, charged to find out highlands answering to the description in the Treaty, westward of the direct line which has alone been hitherto explored. The Undersigned wishes to be informed what limitations it is intended to put upon the course to be followed by the special commission. The diagram, which is annexed to Mr. Livingston's note, does not explain whether the attention of the commissioners is to be directed to any particular spot, or whether they are to be left at liberty to stop at the first highlands, answering the required description with which they may meet after their departure from the monument. It should be recollected that Great Britain has hitherto insisted upon the highlands of the Treaty of 1783, being sought for exclusively *south* of the St. John's River; and she denies the claim of the United States to any territory north of the St. John's. The omission of all mention of so remarkable a feature in the boundary as the intersection of that river, both in the Treaty and in the accounts extant of the negotiations, justifies the inference that the commissioners who framed that Treaty did not contemplate the existence, *north* of the St. John, of the highlands which they describe.

The Undersigned must here remind the Secretary of State of the United States, that the British Government, by the rejection of the decision of the King of the Netherlands, is at liberty to recur to their former position before the arbitration, and to maintain the claims and pretensions they originally established. A strong point in those claims is the exclusive possession of the St. John; nor

must it be inferred that Great Britain, by having expressed a willingness to accept the line of boundary suggested by the arbiter, which intersected the St. John, is in any shape prepared now to surrender that claim without a due equivalent.

The Undersigned begs leave to observe, that the impression left upon his mind after his conversation with Mr. Livingston, and the production by him of a map upon a small scale, is, that the highlands to be sought in the manner he proposed, would probably be found north of the St. John, but some miles westward of the River St. Francis. A subsequent conversation with Mr. McLane left the impression that the special commission would have their attention directed to an examination of the country along the line assumed as the boundary by the American commissioners under the Treaty of Ghent.

The delay occasioned by a reference to his Government imposes upon the Undersigned the obligation of endeavouring to investigate fully, and to seek every explanation of this proposition made by Mr. Livingston, as a means of settling the question of boundary, before he submits it to the consideration of His Majesty's Government. From what has been already stated in this note, the Undersigned will be happy to receive from Mr. McLane some farther explanation of the course intended to be pointed out to the special commissioners, who, he takes it for granted, are to be appointed in one of the two forms stated by Mr. Livingston in his note of 30th April. If it is in the contemplation of the American Government to seek the highlands north of the St. John, and upon the line assumed by the American Commissioners under the Treaty of Ghent, the assent of the British Government to the proposition of Mr. Livingston, would concede to the Government of the United States, nearly all that they have hitherto claimed, and place the British Government in an infinitely worse position than they were willing to accept at a great sacrifice of territory, by acquiescing, as they thought themselves bound to do, in the award of the arbiter. The obscurity which, after all the endeavours of the two Governments, still rests upon the position of the highlands, the Secretary of State, will allow, throws some difficulty, without farther explanation, in the way of acceding to the proposition of Mr. Livingston.

The Undersigned requests, &c.

The Hon. Louis McLane.

(Signed) CHAS. R. VAUGHAN.

§c. §c. §c.

No. 26.

Sir C. R. Vaughan to Viscount Palmerston.—(Received July 9)

(Extract)

Washington, June 12, 1833.

I HAVE now the honor to enclose a copy of a note which I have received from Mr. McLane, the Secretary of State, in answer to the further explanations of Mr. Livingston's proposition, which I requested in a note, dated 31st May, transmitted to your Lordship in my despatch of June 4.

Mr. McLane informs me in the enclosed note, that the President readily directed such farther explanations to be given, as might render that proposition explicit and intelligible; that no limitations are to be put upon the special commissioners, but such as are required by a faithful adherence to the description of boundary in the Treaty of 1783; that wherever highlands may be found answering to the description of them in the Treaty, in any part of the disputed territory, whether north or south of the river St. John, a line is to be drawn to that point upon them, from the monument at the source of the St. Croix, which shall be nearest to the direct north line from that river.

Mr. McLane observes, that Mr. Livingston, in his note of 28th May, has provided against any deviation eastward.

I have acknowledged the receipt of Mr. McLane's further explanations, in a note, a copy of which is enclosed, and I have promised to submit the proposition to the consideration of His Majesty's Government.

Your Lordship will be aware that, in my correspondence with the American Government, I have distinctly stated, according to my instructions, that it appears to His Majesty's Government to be utterly hopeless to attempt to find out, at this time of day, by means of a new negotiation, the line of boundary in conformity with the description contained in the Treaty of 1783. Mr. Livingston and Mr. McLane agree in considering the difficulty to arise more from the

principle hitherto assumed, and the manner pursued in seeking for it, than in any defect in the description.

Mr. McLane states in the enclosed note, that a conventional line of boundary, south of the true line of the Treaty, would deprive the State of Maine of territory, and it could not therefore be adopted, unless on grounds of greater public necessity than at present exist, without the consent of that State, which it is not probable would be given while there remains a reasonable prospect of discovering the line of boundary of the Treaty of 1783, and without such consent, the President, after the proceedings of the Senate last year, is not authorised to agree to a conventional line.

The restrictions, therefore, imposed upon the President, render it hopeless to seek to adjust the boundary by consenting to accept the offer to open a new negotiation.

It is now proposed by the President, that the two Governments shall have recourse to a new commission upon a new principle, that of exploring the disputed territory in search of highlands separating waters according to the Treaty, any where westward of the due north line, which has been alone explored hitherto.

This proposition seems to be the only offer we can expect for settling the boundary until the President is released from the restrictions imposed upon him by the Senate. I am convinced that it is made in a sincere spirit of conciliation which makes it difficult to reject it, but upon clear grounds of inexpediency, from a conviction that the result could not be satisfactory.

Inclosure 1 in No. 26.

The Hon. Louis McLane to Sir C. R. Vaughan.

Department of State, Washington, June 5, 1833.

THE Undersigned, &c., has the honor to acknowledge the receipt of a note from Sir C. Vaughan, &c., dated 31st May, requesting farther explanations of the proposition made by Mr. Livingston in his note of the 30th April, and by him farther explained in that of 28th May, relative to a new manner in which the boundary line might be traced between the possessions of the United States, and of His Britannic Majesty's Government on the north-eastern frontier.

The Undersigned has submitted Sir C. Vaughan's note to the President, and has the honor to state, that anxiously desiring finally to settle this question of boundary, and entertaining the fullest confidence that the proposal already made under his direction, will accomplish that object satisfactorily to both nations, the President readily directs such further explanations to be given as will render that proposition entirely explicit and intelligible.

The Undersigned concurs with Sir C. Vaughan in avoiding at this time any particular discussion of those constitutional difficulties which restrict the United States to a line of boundary according to the Treaty of 1783, more especially as they have been recently explained to Sir C. Vaughan, and must be well understood by him.

In regard, however, to the suggestion of Sir C. Vaughan, that the time has now arrived when this perplexed and hitherto interminable question can only be set at rest by an abandonment of the defective description of boundary contained in the Treaty, by the two Governments mutually agreeing upon a conventional line of boundary more convenient to both parties than that insisted upon by the Commissioners under the Vth Article of the Treaty of Ghent, or the line suggested by the King of the Netherlands, it may be proper to remark, that the embarrassments in tracing the boundary in the Treaty of 1783, arose more from the principles assumed, and the manner pursued in seeking for it, than from any real defect in the description when properly understood; and that in the present state of this business, the suggestion of Sir Charles Vaughan would rather add to than obviate the constitutional difficulties already insuperable.

These difficulties arise from a denial of the power of the General Government, under the constitution of the United States, to dispose of any portion of territory belonging to either of the States composing the Union.

The territory of the State of Maine is supposed to comprehend all the land which would be thrown within her limits, by establishing the true line of the Treaty of 1783; and as any conventional line south of the true line of the Treaty

would deprive her of so much of her territory, it could not be adopted unless on grounds of greater public necessity than at present exists, without the consent of that State. It is not probable that such consent would be given by the State of Maine while there remained a reasonable prospect of discovering the line of the Treaty of 1783, and for the same reason the President would not be authorized, after the recent proceedings in the Senate, to venture now to agree upon a conventional line without such consent.

Under these circumstances, the President directed the proposition submitted in Mr. Livingston's note of 30th April, as affording not only a reasonable prospect, but in his mind the certain means of ascertaining the boundary called for by the Treaty of 1783, and of finally terminating all the perplexities which have encompassed this subject.

In reply, therefore, to the wish expressed by Sir C. Vaughan to be informed what limitations it is intended to be put upon the course to be pursued by the special commissioners, whether their attention is to be directed to any particular spot, or whether they are to be left at liberty to stop at the first highlands answering the required description with which they may meet after their departure from the monument, the Undersigned has the honor to state, that it is not expected that any limitations will be put upon the course to be pursued by the special commissioners, but such as are required by a faithful adherence to the description of boundary in the Treaty of 1783.

It is true that Great Britain has hitherto insisted upon the highlands of the Treaty of 1783 being sought for exclusively south of the St. John River, but it is also true that the United States have, with equal confidence and pertinacity, insisted upon seeking for them exclusively north of that river.

It is the difficulty of reconciling these conflicting pretensions which has hitherto prevented the settlement of the boundary question, arising chiefly, however, from the impracticability of finding a point of highlands answering the description in the Treaty to which a line due north from the monument could be drawn.

It is now proposed, therefore, to make another effort, and by means which heretofore have not been tried to overcome this difficulty, and discarding the due north line, should that become necessary, to seek for and find, in the first place, "the highlands which divide those rivers that empty themselves into the St. Lawrence, from those which fall into the Atlantic Ocean;" and when these shall be found in any part of the disputed territory, north or south of the St. John's River, to draw a line from the monument to the said highlands, and to that point thereof which shall be nearest to a due north line from the monument. Mr. Livingston, in his note of 28th May, has already provided against any deviation eastward from the direct north line from the St. Croix.

The Undersigned, &c.,

(Signed) LOUIS McLANE.

Rt. Hon. Sir C. R. Vaughan,

&c. &c. &c.

Inclosure 2 in No. 26.

Sir C. R. Vaughan to the Hon. Louis McLane.

Washington, June 6, 1833.

THE Undersigned, &c., hastens to acknowledge the receipt of the note of the Secretary of State of the United States, affording him the further explanation which he thought it his duty to require, of the proposition made by Mr. Livingston for settling the boundary.

The Undersigned begs leave to express his satisfaction upon learning that the President directed an immediate answer to be given to his enquiries, and an assurance that no limitations are to be put upon the course of the proposed commission, which is to endeavour to find highlands separating waters as described in the Treaty of 1783, in any part of the disputed territory, north or south of the St. John.

The Undersigned will lose no time in submitting the proposition made by the Government of the United States to His Majesty's Government; as the President, it appears from Mr. McLane's note, is not authorized, after the recent proceedings in the Senate, to agree upon a conventional line of boundary

without the consent of the state of Maine, which it is not probable would be given, while there remains a reasonable prospect of discovering the line of the Treaty of 1783.

The Hon. Louis McLane.
Sec. Sec. Sec.

The Undersigned, &c.

(Signed) CHAS. R. VAUGHAN.

No. 27.

Sir C. R. Vaughan to Viscount Palmerston.—(Received July 18.)

My Lord,

Washington, June 20, 1833.

THE President of the United States having left Washington on a visit to the northern states, I apprehend that, though Mr. McLane, the Secretary of State, has returned to Washington, all further discussion of the boundary question will be suspended until His Majesty's Government reply to the proposition originally made by Mr. Livingston, and which I have already submitted to the consideration of your Lordship.

I am convinced by what has passed between myself and Mr. McLane, that the President is very anxious to bring the boundary question to a settlement. How far that object is likely to be attained by the only proposal that he at present feels himself at liberty to make, it is for your Lordship to decide.

It appears from the correspondence which I have had the honour to transmit to your Lordship, that insurmountable constitutional difficulties restrict the Government of the United States to treat only for a boundary according to the description of it in the Treaty of 1783. Negotiation being hopeless upon such a basis, it is now proposed to have recourse to a joint commission to examine the country in a direction not strictly according to the letter of the Treaty, but in hopes of being able to terminate the line from the St. Croix, upon highlands which may answer to the description of them in the Treaty.

It appears from the note of Mr. Livingston of July last, and of Mr. McLane of the 5th instant, that restrictions have been imposed upon the President in compliance with the pretensions of the State of Maine, which lays claim to the whole of the disputed territory.

Maine was detached from Massachusetts, and admitted as a separate State into the Union, on the 15th March, 1820; and from its local position it has acquired all the rights over the disputed territory which belonged to Massachusetts, one of the thirteen confederates of the revolution.

It cannot be expected that Great Britain should admit the pretensions of the State of Maine to a territory which has never yet, since the conclusion of the Treaty of 1783, been vested in the United States, as it has never been ascertained to the satisfaction of both parties, what portion of it, in conformity with the terms of that Treaty, ought to be set apart from the possession of the British Crown.

To admit the pretensions of Maine, would be to allow the defects of the Treaty to be construed entirely to the advantage of the United States. The compact by Treaty which made the thirteen colonies a new nation, was between the General Government of that nation and Great Britain. The cession in the Treaty, so far as it concerns the north-eastern boundary of the United States was conditional, and made to depend upon ascertaining the true line of boundary designated in the Treaty. It is surely, therefore, for the two Governments to remedy any defects in their original contract, and to carry it into complete execution without reference to the pretensions of any particular State.

The constitution of the United States gave to Congress the power "to dispose of and make all needful rules and regulations respecting the territory of the United States;" but it declares also that nothing shall be done to prejudice a particular State. In this last clause, I apprehend, is to be found the constitutional difficulties which have given rise to the restrictions imposed by the Senate upon the President, when directed to treat for the settlement of the boundary.

If the proposition made by the President should be rejected by His Majesty's Government, or fail in attaining the object sought after, nothing can be done until the constitutional difficulties now said to be insurmountable are removed. They may be removed whenever the State of Maine will consent

to leave the general Government unfettered by her pretensions ; but according to Mr. McLane's note, there is no hope of obtaining the consent of Maine, until every means have been tried to trace the boundary according to Treaty ; and the acceptance of the proposition of Mr. Livingston, is recommended on those grounds.

Enough has been done to prove the difficulty of tracing the boundary precisely according to the description of it in the Treaty. When it guaranteed the independence of Massachusetts, it likewise guaranteed to Great Britain the full possession of the province of Nova Scotia. When they were separated, the boundary westward of Nova Scotia, and between that province and Massachusetts, had never been accurately defined, and as the actual geography of the country was not known, the commissioners who framed the Treaty of 1783, could only draw an imaginary line.

A fruitless attempt to correct the defective description of the boundary was made by commissioners under the Vth Article of the Treaty of Ghent. This attempt has been followed by recourse to arbitration, which, according to the Convention, was to have been a final and conclusive measure. The arbiter, furnished by each claimant with every fact and argument that has been adduced on either side of the question, declared the impossibility of tracing the boundary line in conformity with the description contained in the Treaty of 1783. It is utterly impossible to establish a division of the disputed territory according to that Treaty, and yet we are assured that certain insurmountable constitutional difficulties must restrict the Government of the United States to treat only upon that basis.

At the time when His Majesty's Government is called upon to deliberate upon the only deviation from his restrictions which the President feels himself authorized to make, I cannot refrain from submitting to your Lordship these observations upon the pretensions of Maine, which have imposed restrictions upon the powers of the executive, directed to settle this question, and upon the hopelessness of arriving at any satisfactory result, if we are to adhere to the letter of the Treaty.

I have the honour to be, &c.

Viscount Palmerston. T.C.B.
&c. &c. &c.

(Signed)

CHAS. R. VAUGHAN.

No. 28.

Sir C. R. Vaughan to Viscount Palmerston.—(Received August 1.)

(Extract.)

Washington, July 4, 1833.

THE President returned to Washington this morning. During his absence nothing has occurred in my communications with the Secretary of State relative to the boundary question, and it seems to me that all discussion upon that subject will be avoided until the decision of His Majesty's Government shall be known upon the proposition made by Mr. Livingston.

The information, probably, to be found in the Colonial Department, and that which may be acquired from persons well acquainted with the interests of Lower Canada and New Brunswick, will have afforded the means of ascertaining, satisfactorily, the advantages and disadvantages of accepting that proposition.

Though the constitution of the United States holds out to Foreign Powers that Treaties are to be effected by Ministers acting under instructions from the President, yet the Senate is invested with a controul over all subjects arising out of intercourse with Foreign Powers. Their participation in the making of Treaties has generally been limited, since the administration of General Washington, to advising and consenting to ratify a Treaty ; but their agency has been admitted by the President, formerly, by advising on the instructions to be given previously to opening a negotiation. When the Senate, in the month of July last year, advised the rejection of the decision of the King of the Netherlands, they took the initiative in the process of the negotiation which they directed the President to offer to open at Washington for the settlement of the boundary, as they restricted the executive to treat only for a boundary, according to the description in the Treaty of 1783.

I am persuaded that there will be great difficulty in constituting a joint commission upon the plan of Mr. Livingston. To insure proper skill and im-

partiality it should be selected in Europe. From the nature of the country the commissioners can be actively employed only during the summer months; the undertaking will last, therefore, in all probability, more than one year.

Should His Majesty's Government reject the proposition of Mr. Livingston, Mr. McLane has stated that, without the consent of Maine, the General Government cannot treat for a conventional line of boundary. It may be inferred from Mr. McLane's note of 28th May, that the failure of the commission to discover the highlands to be sought after, would give grounds of greater public necessity for that consent than at present exist.

The rejection of Mr. Livingston's proposition, and the impossibility of engaging the Government of the United States to treat for a conventional line, must have the effect, I presume, of leaving the disputed territory in the possession of His Majesty, unless it should still be left at the option of this Government to acquiesce in the boundary suggested by the King of the Netherlands.

It appears to me that the time is arrived when, notwithstanding the insuperable constitutional difficulties in the way of the Government of the United States, the question of boundary must be settled by a mutual concession of pretensions, and by a fair and equitable division of the disputed territory between the two claimants. If the position of that territory is examined, an adjustment of the interests of both parties does not seem to present any difficulty. The intrinsic value of the soil is unknown beyond the timber which covers it. The essential interests of the two Governments consist in its position—in its locality. Great Britain must contend for a secure and uninterrupted communication by the usual and accustomed road between Halifax and Quebec. It must be the interests of the United States to procure as large an extension of territory as possible on the frontier of Maine. It must, likewise, be the interest of both Governments to find out and establish a well defined line of boundary between the possessions of the two nations.

All these objects, it appears to me, would be obtained in the most satisfactory manner, by following the due north line already explored, and fixed from the monument at the source of the St. Croix River to the point where it strikes the St. John, and thence let it be continued along the right bank of that river westward to its sources, and afterwards, by the most direct line, to the sources of the Connecticut.

I conceive that such a boundary would be worth purchasing by the sacrifice of any territory south of the St. John, and westward of the due north line from the St. Croix.

No. 29.

Sir C. R. Vaughan to Viscount Palmerston.—(Received December 5.)

My Lord,

Washington, November 12, 1833.

THE Secretary of State, Mr. McLane, informs me, that the President has expressed an anxious desire to receive before the meeting of Congress, on the 4th of December next, the answer of His Majesty's Government, to the proposal which I had the honour to transmit to your Lordship, to settle the boundary between His Majesty's possessions in North America and those of the United States, by having recourse to a commission of scientific persons, selected in Europe, who should examine the disputed territory, in search of highlands westward of the due north line from the St. Croix already explored, where waters are divided, which fall on the one side into the river St. Lawrence, and on the other into the Atlantic Ocean. The discovery of such highlands would coincide sufficiently with the terms of the Treaty of 1783, to justify the President in fixing the line of boundary, on his own authority, without any intervention of the Senate or any attention to the pretensions of the State of Maine.

I have endeavoured to repress the impatience of the President by stating, that he might rest assured that there was no disposition, on the part of His Majesty's Government, to defer coming to a decision upon any point in agitation between the two Governments; but that the question of boundary had been a subject of controversy between the two nations for fifty years, and the delay in investigating the proposal of the United States might justly be attributed to the

great and important measures of domestic policy, which had occupied His Majesty's Government to a very late period of the present year.

I have the honour to be, &c.

Viscount Palmerston, G.C.B.
 &c. &c. &c.

(Signed)

CHAS. R. VAUGHAN.

No. 30.

Sir C. R. Vaughan to Viscount Palmerston.—(Received January 1, 1834.)

(Extract.)

Washington, December 4, 1833.

THE two Houses of Congress having announced to the President that they were constituted, and ready to receive any communication from him, the annual message, a copy of which I have the honour to enclose, was delivered on the 3rd instant.

With regard to the relations with Great Britain the President observes, that it is gratifying to perceive, that the intercourse between the two people is becoming daily more extensive, and that sentiments of mutual good will justify the hope, that unsettled questions may be satisfactorily terminated and new causes of misunderstanding prevented. He informs the Congress, that the interesting question of their north-eastern boundary is still undecided, but that an answer may be daily looked for, to a proposition submitted to the British Government with the view of establishing the line designated by the Treaty of 1783.

I have always pointed out to the Secretary of State, that the restriction imposed by the Senate upon the President, to treat only for a line according to that Treaty, is one of the great difficulties in settling the boundary; and I have endeavoured to repress the expectation of receiving an answer immediately to the proposition of Mr. Livingston, on account of the complicated manner in which it has been proposed to constitute a commission of scientific persons, to be sent from Europe, to explore a line, deviating only from the defective description in the Treaty of 1783, by permitting a search for highlands, in any direction westward of the due north line from the St. Croix, laid down in that Treaty.

Inclosure in No. 30.

*Extract from the Message of the President of the United States to Congress.
 December 3, 1833.*

WITH Great Britain the interesting question of our north-eastern boundary remains still undecided. A negotiation, however, upon that subject has been renewed since the close of the last Congress, and a proposition has been submitted to the British Government with the view of establishing, in conformity with the resolution of the Senate, the line designated by the Treaty of 1783. Though no definitive answer has been received, it may be daily looked for; and I entertain a hope that the overture may ultimately lead to a satisfactory adjustment of this important matter.

No. 31.

Viscount Palmerston to Sir C. R. Vaughan.

Sir,

Foreign Office, December 21, 1833

HIS Majesty's Government have given the most attentive and deliberate consideration to the several communications which they have received, through you, from the Government of the United States, upon the important subject of the north-eastern boundary; and I am commanded by His Majesty to instruct you to make the following communication to the American Government in reply.

His Majesty's Government have great pleasure in acknowledging the friendly spirit which pervades the communications of the Government of the United States on this subject. Desirous as His Majesty's Government are to confirm and perpetuate the good understanding which so happily subsists between the two countries, they naturally feel anxious to bring to an amicable adjustment, a question which has so long remained unsettled; and they cannot but flatter themselves

that, through a conciliatory disposition on both sides, the remaining difficulties might be overcome.

His Majesty's Government trust that they gave a proof of this disposition on their part, when they intimated to the Government of the United States, that not only were they prepared to abide, as they consider both parties bound to do, by the decisions of the King of the Netherlands, upon such of the points referred to him upon which he has pronounced a decision; but that they were willing to agree to the compromise which that Sovereign has recommended, upon the single point on which he found it impossible to make a decision strictly conformable with the terms of the Treaty.

The Government of the United States has not hitherto concurred with that of His Majesty in this respect; but as such a course of proceeding, on the part of the two Governments, would lead to the speediest and easiest settlement, it is the wish of His Majesty's Government to draw the attention of the American Cabinet to some considerations on this subject, before they advert to the new proposition made to you by Mr. Livingston.

It is manifest that nothing but a sincere spirit of conciliation could induce His Majesty's Government to agree to the adoption of the arrangement recommended by the King of the Netherlands; because the boundary which he proposes to draw between the two parties, would assign to the United States more than three-fifths of that disputed territory, to the whole of which, according to the terms of the award itself, the title of the United States is defective in the same degree as that of Great Britain.

But it seems important, in the first place, to consider what the reference was, which the two parties agreed to make to the King of the Netherlands, and how for that Sovereign has determined the matters which were submitted for his decision.

Now, that which the two Governments bound themselves to do, by the Convention of the 29th of September, 1827, was, to submit to an arbiter certain "points of difference which had arisen in the settlement of the boundary" between the British and American Dominions, and to abide by his decision on those points of difference; and they subsequently agreed to name the King of the Netherlands as their arbiter. The arbiter, then, was called upon to determine certain questions; and if it should appear that he has determined the greater part of the points submitted to him, his decisions on those points cannot be rendered invalid by the mere circumstance that he declares, that one remaining point cannot be decided in any manner that shall be in strict conformity with the words of the Treaty of 1783; and that he, consequently, recommends to the two parties a compromise on that particular point.

The main points referred to the King of the Netherlands were the three following:—

1st. Which is the spot designated in the Treaties as the north-west angle of Nova Scotia, and which are the highlands dividing the rivers that empty themselves into the river St. Lawrence, from those falling into the Atlantic Ocean, along which highlands is to be drawn the line of boundary from that angle to the north-west head of the Connecticut River.

2nd. Which is the north-west head of the Connecticut River.

3d. Which is the boundary to be traced from the river Connecticut along the parallel of the forty-fifth degree of north latitude, to the river St. Lawrence, called in the Treaties, Iroquois or Cataraguy.

Now, without adverting for the present to the opinion of the arbiter on the first point, I have to remark that on the second point he has given a positive decision, strictly confined within the limits of the reference, and to which no objection, even of a technical nature, can by possibility be urged.

On the third point also, the arbiter has given a positive decision, and has declared that the forty-fifth degree of latitude should be determined by observation. He has indeed added to this decision a recommendation that Rouse's Point, and a surrounding circle with a radius of one kilometer, shall belong to the United States, whether Rouse's Point be, or be not, included within the territory of the United States according to the boundary to be drawn by astronomical observation; and His Majesty's Government, in subscribing to the decision of the arbiter on this point, which, like his decision on the second, they consider to be binding on both parties, declares itself willing to accede to the above stated recommendation.

It appears then that, upon two points out of the three, the arbiter has made a plain and positive decision.

Upon the remaining point, he has declared that it is impossible to find a spot, or to trace a line, which shall fulfil all the conditions required by the words of the Treaty, for the north-west angle of Nova Scotia, and for the highlands along which the boundary is from that angle to be drawn; and he, consequently, recommends to the two parties a line of boundary, which he considers to be conformable with the spirit of the Treaty, and to approach the most nearly to the probable intention of its framers; and this line the British Government is still willing to adopt.

But though the arbiter has declared that it is not possible to find a north-west angle for Nova Scotia, nor a separating range of highlands, which shall be precisely conformable with the words of the Treaty, yet in the course of his reasoning upon this point, he has decided several questions connected with it, upon which the two parties had entertained different views; and it is the opinion of His Majesty's Government, that the decisions of the arbiter upon these subordinate questions ought to be acquiesced in by the two Governments. They think that the spirit of the agreement to make the reference, requires that the two parties should so acquiesce, and they are, moreover, of opinion that, by doing so, the two Governments would clear away several of the remaining points of difference, and materially facilitate an amicable adjustment of the rest.

1st. The arbiter expresses his opinion that the term "highlands," may properly be applied not only to a hilly and elevated country, but to a tract of land which, without being hilly, divides waters flowing in different directions; and, consequently, according to this opinion, the highlands to be sought for, are not necessarily a range of mountains, but rather the summit level of the country.

2nd. The arbiter expresses his opinion, that an inquiry as to what were the ancient boundaries of the North American Provinces, can be of no use for the present purpose; because those boundaries were not maintained by the Treaty of 1783, and had, in truth, never been distinctly ascertained and laid down.

3rd. The arbiter declares that the north-west angle of Nova Scotia, mentioned in the Treaty of 1783, is not a point which was then known and ascertained; that it is not an angle which is created by the intersection of any lines of boundary at that time acknowledged as existing; but that it is an angle still to be found, and to be created by the intersection of new lines, which are hereafter to be drawn in pursuance of the stipulations of the Treaty. And, further, that the nature of the country eastward of the said angle, affords no argument for laying that angle down in one place rather than in another.

4th. He states that no just argument can be deduced for the settlement of this question from the exercise of the rights of sovereignty over the Fief of Madawaska, and over the Madawaska settlement.

5th. He declares that the highlands contemplated in the Treaty should divide immediately, and not mediately, rivers flowing into the St. Lawrence, from rivers flowing into the Atlantic, and that the word "divide," requires contiguity of the things to be divided.

6th. He declares that rivers falling into the Bay of Chaleur, and into the Bay of Fundy, cannot be considered according to the meaning of the Treaty, as rivers flowing into the Atlantic; and, specifically, that the rivers St. John and Ristigouche cannot be looked upon as answering to the latter description.

7th. He declares that neither the line of boundary claimed by Great Britain, nor that claimed by the United States, can be adjudged as the true line, without departing from the principles of equity and justice as between the two parties.

Now, whether the two parties adopt the mode of settlement recommended by the arbiter, and agree to divide between them, in some proportion or other, the disputed territory; or whether they shall still make another attempt to trace a boundary in strict conformity with the words of the Treaty; in either case it appears to His Majesty's Government that it would be necessary to adopt these seven decisions of the arbiter, as a groundwork for further proceedings; and it seems that no satisfactory or useful result could be obtained from the local survey proposed by the American Government, until the two parties are agreed upon these seven points.

But with respect to the proposition made by the American Government, the first question which presents itself is, whether there is any reasonable probability

that a fresh local survey to be made in the manner suggested, would afford a solution of the remaining problem.

The Treaty requires that highlands should be found, dividing rivers which fall into the St. Lawrence, from rivers which fall into the Atlantic Ocean; and that those highlands should be found in a direction due north from a spot which has already been determined, namely, the source of the river St. Croix.

Now, every thing which is known of the geography of the country tends to shew, that no such highlands can be found in that particular meridian; and the American Government, almost admitting that fact, suggests that the required highlands should be sought for in a north-westerly direction from the ascertained spot. No doubt can exist that, by going far enough to the westward, such highlands as those required by the Treaty could be found, because it is well-known that the high ground in the neighbourhood of the source of the St. John, divides the Kennebec which falls into the Atlantic, from the Chaudière which falls into the river St. Lawrence.

But the difficulty which is said to prevent the Government of the United States from acquiescing in the recommendation of the King of the Netherlands is, that the Federal Government has no authority to agree to any other line of boundary than that, which is described by the Treaty, which constituted the United States; at least not to any other line which might imply a cession of any part of the territory to which the Treaty, as hitherto interpreted by the United States, may appear to entitle one of the component States of the Union.

But if this objection is insurmountable as against the line recommended by the King of the Netherlands, would it not be equally fatal to that suggested by Mr. Livingston? Because, if the boundary was formed by a line drawn from the head of the St. Croix to highlands found to the westward of the meridian of that spot, that boundary would not be the boundary of the Treaty; seeing that the Treaty requires the boundary to be run along the meridian of the head of the St. Croix, and the State of Maine might object to any deviation from the line of the Treaty in a westerly direction, as justly as it could to any deviation from that line in a southerly direction. Nay, it might object, with more appearance of reason, to a westerly departure from an ascertained meridian, which is distinctly specified in the Treaty, than to a departure southward from an imaginary line, which is only described in the Treaty, and the finding of which is a thing that has not yet been accomplished.

The present state of the case, therefore, seems to be this: that to carry the Treaty strictly and literally into execution, is physically and geographically impossible; and that there exist constitutional difficulties in America which have not yet been surmounted, which prevent the Government of the United States from agreeing to a compromise.

Upon a full view of this matter, then, His Majesty's Government think that, in the first place, and previously to any further negotiation, they are entitled to claim from the Government of the United States an acquiescence in the decisions pronounced by the arbiter upon all those points which he has decided; and, in the next place, that, as a preliminary to any attempt (in which His Majesty's Government would gladly concur) to settle the remaining point by negotiation, they ought to be satisfied that the Government with which they will have to treat, is possessed of the powers necessary for carrying into effect any arrangement upon which the two parties might agree.

I am, &c.

Rt. Hon. Sir C. R. Vaughan,
&c. &c. &c.

(Signed) PALMERSTON.

No. 32.

Viscount Palmerston to Sir C. R. Vaughan,

Sir,

Foreign Office, December 21, 1833.

WITH reference to my accompanying despatch of December 21, the substance of which you will communicate in an official note to the American Government, I have further to instruct you to make in the same shape, the following observations to Mr. McLane, on the subject of that constitutional difficulty by which alone the American Government, as appears from your correspondence with Mr. Livingston, is prevented from acquiescing in the

arrangement recommended by the King of the Netherlands for the final settlement of the boundary in the neighbourhood of the river St. John.

The constitutional difficulty in question is stated to be, the want of authority in the Government to cede territory belonging to any one of the States of the Union; and it arises, on the present occasion, in consequence of an objection advanced by the State of Maine. The Government of Maine assumes, that the Treaty of 1783 has given to that State a perfect title to all the territory lying to the southward of the highlands north of the St. John, and to the westward of the meridian of the head of the St. Croix. The State of Maine can have no other title to this territory than that which she derives from the Treaty; and if the Treaty is found to have left that title imperfect, the assumption that the territory claimed under it is part of the territory of Maine, falls to the ground; and that assumption is the basis of the constitutional objection by which the American Government conceives itself fettered.

The arbiter has certainly failed to establish a boundary, such as is described by the Treaty, for the whole of the interval between the source of the St. Croix and those highlands which divide the waters of the Chaudière from those of the Kennebec; but he has at least determined what is *not* that boundary. He has decided, for instance, in opposition to the claim of Great Britain, that the boundary to be sought for does not lie along the highlands to the south of the St. John; but he has equally decided that it does not lie along the highlands claimed by America to the north of the St. John. For, by declaring that the rivers St. John and Ristigouche are not Atlantic rivers within the meaning of the Treaty, and, farther, that the Treaty requires an immediate division of rivers by the highlands, and is not satisfied by an immediate division in one direction, and a mediate division in the other, he has decided, that neither the highlands claimed by Great Britain nor those which are claimed by America, fulfil both of the necessary conditions. The arbiter's opinion is, that each of those ranges of highlands fulfils one of those conditions, and fails to fulfil the other; that it is geographically impossible that there should exist highlands east of the sources of the St. John, which can fulfil both of them together; and, consequently, that the territory which lies between the highlands claimed by Great Britain, and those claimed by the United States, respectively, is not the absolute property of either party, but is, in some proportion or other to be hereafter determined, the property of both; that the territory, if not entirely British, is also not entirely American; and therefore is not such territory as the American Government can be precluded by the constitution from relinquishing.

The only part of the territory in question to which the Government of the United States cannot constitutionally give up its claim, is that part which belongs of right to Maine, according to the Treaty of 1783. But the arbiter has clearly decided that the whole of the disputed territory does not so belong to the State of Maine; and finding it impossible to determine how much of it is so belonging to Maine, he recommends a compromise by which the contending parties should settle their differences.

I am, &c.

The Rt. Hon. Sir C. R. Vaughan.

(Signed)

PALMERSTON.

&c. &c. &c.

No. 33.

Sir C. R. Vaughan to Viscount Palmerston.—(Received March 18.)

My Lord,

Washington, February 12, 1834.

I HAVE the honor to acknowledge the receipt, on the 10th instant, by way of Liverpool, of your Lordship's despatches, dated the 21st December. Until the arrival of the packet, bearing these despatches on the 10th of February, no intelligence from Europe had been received of a later date than the 27th November, owing to an unusually long continuance of contrary winds.

Having requested an audience of the Secretary of State, I delivered to him on the 11th instant, two notes, copies of which it is not necessary to enclose, as they were transcripts of the despatches which your Lordship directed me to communicate officially to the Government of the United States.

When I presented the contents of the first of your Lordship's despatches, I observed that it was the opinion of His Majesty's Government, that no favourable

result could arise from the actual survey proposed originally by Mr. Livingston, until the two Governments should agree to acquiesce in certain points, which the arbiter had clearly decided according to the submission. Those points he would find enumerated in the note which I had delivered to him. If the American Government would consent to agree upon those points, many subjects of difference would be cleared away, and a final adjustment materially facilitated.

After reading the first note, Mr. McLane seemed to think that the acquiescence in the points enumerated by your Lordship would still leave the President in all the embarrassment of the constitutional difficulty started by Maine, which Mr. Livingston's proposition was designed to get rid of, as wherever the proposed survey should discover highlands, on that point the Executive could fix the line of boundary as being according to the Treaty, without any reference to the Senate or to the pretensions of Maine.

Having noticed the difficulty which Maine might again offer to any line diverging from the due north line of the Treaty, to reach highlands to the westward of it, I presented in a second note, the observations contained in your Lordship's last Despatch, on the constitutional difficulty which has prevented the United States from acquiescing in the arrangement recommended by the King of the Netherlands.

Mr. McLane stated that he should immediately lay my notes before the President, after which he promised to see me again.

There is no probability that I shall be able to report upon the disposition of this Government to acquiesce, in time for the packet which will convey this despatch.

I have the honour to be, &c.,
Viscount Palmerston, G.C.B. (Signed) CHAS. R. VAUGHAN.
 &c. &c. &c.

No. 34.

Sir C. R. Vaughan to Viscount Palmerston.—(Received April 21.)

My Lord,

Washington, March 12, 1834.

I HAVE the honour to transmit to your Lordship, the answer which I have just received from the Secretary of State of the United States, to the two notes upon the question of boundary, which, according to your Lordship's instructions, I addressed to him on the 10th ultimo.

The President declines acquiescing in the seven subordinate points enumerated by your Lordship, and growing out of one of the three points which were submitted to the arbiter. With regard to the two other points, it is denied in the enclosed note that the arbiter had decided them; but if His Majesty's Government will accede to the proposition made by the United States, for a survey upon the new principle proposed, he is willing to adopt the stream situated farthest to the north-west among those which fall into the northernmost of the three lakes, as the northernmost head of the Connecticut River, according to the Treaty of 1783, and to dispose of the other point by adopting the latitude laid down in a survey of Valentine and Collins made in 1771 and 1772.

The President thinks that the highlands of the Treaty may be found with the aid of more accurate surveys by skilful persons, freed as they are to be, from the restraint of proceeding in a due north line from the monument at the sources of the St. Croix River; and he is persuaded that His Majesty's Government will be disposed to co-operate with him in another effort for the adjustment of this important subject.

I shall endeavour to see Mr. McLane before I acknowledge the receipt of his note.

I have the honour to be, &c.
Viscount Palmerston, G.C.B. (Signed) CHAS. R. VAUGHAN.
 &c. &c. &c.

Inclosure in No. 34.

*The Hon. Louis McLane to Sir C. R. Vaughan.**Department of State, Washington, March 11, 1834.*

THE Undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Sir Charles R. Vaughan, &c. &c. of the 10th ultimo, communicating the views entertained by His Majesty's Government, of the proposition submitted by direction of the President, in a letter from Mr. Livingston of the 30th of April last, for the settlement of the question respecting the north eastern boundary.

The Undersigned has submitted Sir Charles R. Vaughan's note to the President, and has received his directions to make the present reply.

The President perceives, with pleasure, a spirit on the part of His Majesty's Government corresponding with that with which he is actuated in his endeavours, finally, to settle a subject so important to the amicable relations between the two countries; and although he cannot concur in all the views, which Sir Charles R. Vaughan has been commanded to present, he entertains the hope, that the spirit in which they have been presented, may yet recommend the acceptance of the proposition authorized by the President, in relation to what is understood to be the chief difficulty in ascertaining the true boundary according to the Treaty of 1783.

In his note of the 10th instant, Sir Charles R. Vaughan in substance remarks, that by the Convention of the 29th September, 1827, the two Governments bound themselves to submit to an arbiter certain points of difference which had arisen in the settlement of the boundary between the British and American Dominions, that the arbiter was thus called upon to determine certain questions, and that, if he has determined the greater part of the points submitted to him, his decision on those points ought not to be disregarded, merely because he declares that one remaining point cannot be decided in any manner in conformity with the words of the Treaty of 1783, and therefore recommends to the two parties a compromise on that particular point. Sir Charles R. Vaughan also remarks, the main points referred to the arbiter were the three following.

1. Which is the spot designated in the treaties as the north-west angle of Nova Scotia, and which are the highlands dividing the rivers that empty themselves into the river St. Lawrence from those falling into the Atlantic Ocean, along which highlands is to be drawn the line of boundary to the north-west head of the Connecticut River.

2. Which is the north-west head of the Connecticut River.

3. Which is the boundary to be traced from the river Connecticut along the parallel of the 45th degree of north latitude to the river Iroquois or Cataraquy (St. Lawrence) as intended by the Treaty of 1783.

Sir Charles R. Vaughan likewise supposes, that upon the second and third of these points, the arbiter has given a decision, to which no objection can be urged.

Sir Charles R. Vaughan also proceeds to state, that although the arbiter has declared that it is impossible to find a spot, or to trace a line which shall fulfil all the conditions required by the words of the Treaty for the north-west angle of Nova Scotia, and for the highlands along which the boundary is to be drawn, yet, that in the course of his reasoning upon this point, he has decided several questions, being seven in number, connected with it, upon which the two parties had entertained different opinions.

Sir Charles R. Vaughan further states, that it is the opinion of His Majesty's Government, that the decisions of the arbiter upon the second and third points referred, and also upon the subordinate questions, as to which he expressed an opinion in his reasoning upon the first main point, ought to be acquiesced in by the two Governments; and that, in any future attempt to trace a boundary in strict conformity with the words of the Treaty of 1783, it would be necessary to adopt the opinion expressed on those seven questions as a ground work for further proceedings.

Without here attempting a more particular reference to other remarks of Sir Charles R. Vaughan, the Undersigned will proceed with his observations in reply; not doubting, that in these a satisfactory answer to the entire scope of Sir Charles R. Vaughan's note will be perceived.

The Undersigned is constrained to express his regret, that it should still be considered by His Majesty's Government, that any part of the opinion of the arbiter is obligatory upon either party, but he does not deem it necessary or useful at present, to enter at large into the discussion of that point. From the nature of the opinions expressed by the arbiter, his recommendations could not have been carried into effect by the President without the concurrence of the Senate; and that body considering those opinions not only as not determining the great and substantial object of the reference, but as in fact deciding that object to be impracticable, and therefore recommending to the two parties a boundary not even contemplated either by the Treaty or by the reference, nor within the power of the general Government to take, declined advising the President to execute the measures recommended by the arbiter, but, on the contrary, did advise him to open a new negotiation with His Britannic Majesty's Government, for the ascertainment of the boundary between the possessions of the United States and those of the King of Great Britain, on the north-eastern frontier of the United States, according to the Treaty of 1783.

The proposition submitted by Mr. Livingston in his letter of the 30th April proceeds upon this basis, in the hope that, if embraced, it will remove the principal difficulty which prevented the arbiter from attaining the object of the reference.

The Undersigned is constrained to observe, however, that he cannot admit that even a decision, much less the expression of an opinion by the arbiter upon some of the disputed points, but of a character not to settle the real controversy, is binding upon either party in any future attempt to adjust that which the arbiter failed to settle.

Now the main object of the stipulation in the Vth article of the Treaty of Ghent, of the commission raised under that article, and of the reference to the King of the Netherlands, was the ascertainment of the north-eastern boundary along its entire line, according to the Treaty of 1783, and which had remained unascertained since that period. It is true that, in the ascertainment of this boundary, many points, as is most generally the case in disputed questions of location, were involved, and that each of those may be admitted to be necessary to the discovery of the true boundary throughout the whole line; but when the arbiter felt himself unable to decide *more than one, or at most two, of these points*, he was in fact little nearer the accomplishment of the great and real object of the reference, or of the objects of the Treaty of 1783, and that of Ghent, than if he had left each point undetermined. The most material point in the line of the true boundary, both as it respects the difficulty of the subject, and the extent of the territory and dominions of the respective Governments, he confessedly not only failed to decide, but acknowledged his inability to decide, thereby imposing upon both Governments, and especially that of the United States, owing to the peculiar structure of its institutions, the unavoidable necessity of resorting to further negotiation, and other means to ascertain the real boundary of the Treaty of 1783; and as a necessary consequence, each party was absolved from any obligation to adopt his recommendations.

Not only has the arbiter not decided all the points necessary to be ascertained for the purpose of establishing the true boundary of the Treaty of 1783; but the vital and most material point, that without which no step can be taken in fixing the boundary and running the line stipulated by the Treaty of 1783, he has undeniably left undecided, whereby the great objects of the Treaties and of the Convention of reference have been defeated.

Nor can the Undersigned admit, that of the three main points of difference referred to the arbiter as necessary to ascertain the boundary of the Treaty of 1783, he has decided two, as is supposed by His Majesty's Government. On the first point it is not contended that the arbiter made a decision, or that he found either the angle or the highlands called for by the Treaty of 1783; but it is on the contrary clear, that so far from deciding that point, or finding those places, he merely expressed an opinion of what would be suitable for the parties to adopt in lieu of the line of the Treaty; and it appears to the Undersigned equally clear, that, in relation to the third point, his opinion is expressed in no more positive language, and with no nearer an approach to a decision. On this point he expresses an opinion merely that it will be suitable to proceed to fresh operations to measure the observed latitude, but in such manner that

the fort at Rouse's Point shall be included in the territory of the United States.

The Undersigned is aware, however, that if the proposition made by Mr. Livingston should be acceded to by His Majesty's Government, and the commission hereafter to be appointed should result as the Undersigned believes it will, in ascertaining the true situation of the boundary called for by the Treaty of 1783, it would be afterwards necessary, in order to ascertain the true line of boundary, to settle the other two points according to which it is to be traced: and as the proposition contained in Mr. Livingston's letter does not apply to either of these points, the President is sensible that some understanding upon them will be proper to the attainment of the great object he is pursuing.

The President has therefore directed the Undersigned to say, that if the proposition he has caused to be made, be acceded to by His Majesty's Government, notwithstanding that he does not admit the obligatory effect of the decision, or rather the opinion of the arbiter on the point, he is willing to take the stream situated farthest to the north-west among those which fall into the northernmost of the three lakes, the last of which bears the name of Connecticut Lake, as the north-westernmost-head of the Connecticut River, according to the Treaty of 1783.

As it respects the third point referred to the arbiter, but upon which he failed to decide, Sir Charles R. Vaughan is, doubtless, aware, that as early as the year 1771 and 1772, the line of boundary involved in it, was surveyed and marked along the 45th parallel of north latitude from the east side of Lake Champlain to the river Connecticut, by Thomas Valentine, deputy surveyor on the part of the province of New York, and by John Collins, deputy surveyor of the province of Quebec; that since that period, grants of land have been made by the respective Governments on both sides up to this line; that settlements have been formed, that towns have risen up, and that jurisdiction has been exercised by the two Governments up to this line on either side. These facts are certainly cogent proofs that this line is the true boundary according to the Treaty of 1783; and it appears to the President, that regarding the preservation of the population on both sides, their habits and settlements, this third point might be disposed of with mutual satisfaction to both nations, and in strict conformity with the Treaty of 1783, by adopting the line as surveyed and marked by Thomas Valentine and John Collins, in 1771 and 1772; and he will accordingly agree, if his proposition as to the first point be embraced, to adopt this line.

An acquiescence by the United States in the opinions, which it is supposed by His Majesty's Government have been pronounced by the arbiter in the course of his reasoning upon the first point submitted to him, is liable not only to the objections already stated, but to others which the Undersigned is constrained by the spirit of frankness in which the proposition directed by the President has been presented, to inform Sir Charles R. Vaughan, are insuperable.

It is in the first place to be observed, that the matters to which the arbiter's opinions mentioned by Sir Charles R. Vaughan relate, although subjects on which the two parties may have entertained different views, were subordinate merely to the point in dispute submitted to the arbiter, and were used by the parties in illustration of their pretensions, and as affording grounds to sustain their respective positions on the real point in dispute. The views expressed by the arbiter on these matters cannot be regarded as decisions within the meaning of the reference, but rather as postulates or premises by which, in the course of his reasoning, he arrived at the opinion expressed in regard to the point submitted for his decision; and it therefore follows, that the acquiescence on the part of the United States, as required by Great Britain, would be to reject as erroneous the conclusion of the arbiter, and at the same time to adopt the premises and reasoning by which he reached it.

It must also be remarked, that these seven postulates or premises selected by His Majesty's Government as necessary to be conceded by the United States, are but part of those on which the arbiter, in the course of his reasoning, was equally explicit in the expression of his views, and that on others his reasoning may be considered as being more favourable to the pretensions of the United States; and no reason is perceived, therefore, why an acquiescence in the

opinions of the arbiter upon these should not equally apply to all the premises by him assumed, and be binding upon both Governments.

The Undersigned is persuaded, however, that there is no obligation upon either party to acquiesce in the opinion of the arbiter on any of the matters involved in his premises, and that to do so would defeat the end of the present negotiation.

It appears to be conceded that, upon this great and most material point, the arbiter has not made his decision in such manner as to be binding upon either of the parties; and if, in consequence of this fact, no obligation can arise to acquiesce in his opinion upon the main point he was called upon to decide, certainly there can be no greater obligation to yield, not to his decisions, but to his opinions upon matters subordinate merely.

The stipulations in the Treaty of Ghent require the ascertainment and determination of those parts of the boundary designated in the Treaty of Peace of 1783, therein mentioned, and the three points of difference between the commissioners appointed according to the former Treaty, were referred to the decision of the arbiter. Of these the most material point is that of the highlands to which the proposition directed by the President applies, and which are designated in the Treaty of Peace as the north-west angle of Nova Scotia, formed by a line drawn due north from the source of the St. Croix River to the highlands dividing the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean.

Now should it even be admitted that, in relation to some of the matters subordinate to this material point submitted to him, the arbiter may have expressed his opinions, yet it is obvious that the result of his reasoning, and of those opinions upon his premises, taken together, instead of leading to the determination he was called upon to make, necessarily conducted him to the conclusion, that neither of the boundaries claimed by the respective parties is the true line, and that he himself could not ascertain and determine which the true line according to the Treaty, is. His premises and reasoning, therefore, ended in satisfying the judgment of the arbiter, that it was impossible for him to decide the great point submitted to him. But, instead of reviewing his course of reasoning, which, for the cause already stated, there was good ground to distrust, and in the opinion of the Undersigned wholly to reject, inasmuch as to admit its accuracy would be subversive of the objects and stipulations both of the Treaty of 1783, and of that of Ghent; and instead of proceeding by other means to ascertain and determine the true line, he recommended a new line confessedly different from that called for by the Treaty of 1783, answering in no particular the words of that Treaty, and which could only be established by a Convention between the two Governments. But this recommendation the Government of the United States could not adopt, nor without the consent of the State of Maine, agree upon a new and conventional line, different from that required by the Treaty of peace. The resolution of the Senate, pursuant to which the present negotiation has happily been renewed, proposes to ascertain the boundary according to the Treaty of 1783; and for this purpose, by whatever means it may be attained, the authority of the Government of the United States is complete, without the co-operation of the State of Maine.

Now it must be admitted, that the arbiter precluded himself from attaining this object, by his reasoning on the subordinate matters already mentioned, and by failing afterwards to adopt other means not only allowable, but usual in such cases.

In all questions of boundaries of tracts and countries designated by natural objects, the plain and universal rule of surveying is, first to find the natural object, and then to reach it by the nearest direct course from any given point, and with the least possible departure from the particular course called for in the original deed or Treaty. The obstacles by which the commissioners, in the first instance, and the arbiter afterwards, were prevented from ascertaining the boundary upon the first point of difference, was the supposed impossibility of finding such highlands answering the description of the Treaty of 1783, as could be reached by a line drawn due north from the monument; whereas, had either first found the highlands called for by the Treaty, and afterwards, in conformity with the rule already adverted to, traced the line from the monument to such highlands, in the manner above indicated, it is believed the true line of the Treaty could have been ascertained.

Here then is one plain and usual means by which this difficult question may be settled, but which has not yet been resorted to in the previous efforts of the party to adjust it. This means the proposition submitted by the President proposes to employ, and in the manner particularly referred to in the letters which have been heretofore addressed by the Secretary of State to Sir Charles R. Vaughan.

Now the proposition of the President is to find the highlands answering the description of those called for by the Treaty of 1783, and to them, from the monument, to run a direct line; and the President does not doubt that, with the aid of more accurate surveys by skilful persons, on the ground, and freed from the restraint hitherto imposed by a due north line, such highlands may be found, and which either the commissioners or the arbiter might have found, had they adopted the rule now proposed.

But the British Government asks the United States, as a preliminary concession, to acquiesce in the opinion of the arbiter upon certain subordinate facts, being seven in number, by which, obviously, he was prevented from finding that which it is the object of the President now to discover. The Undersigned is persuaded that Sir Charles R. Vaughan will admit that the concession of these opinions would, in effect, defeat the sole object not only of the proposition, but of the negotiation at present renewed, *i. e.* the ascertainment and determination of the boundary according to the Treaty of 1783.

By the opinion of the arbiter, in relation to these subordinate matters, he reaches the conclusion that the discovery of the line of 1783 was impracticable, and that the question could only be settled by a conventional line; and, therefore, the acquiescence of the United States in the same opinions would, *in limine*, confine the negotiation to a conventional line, to which, in the present state of the controversy, they have no authority to agree.

To insist upon such concession would not merely defeat the object of the negotiation, but would be an unnecessary departure from the terms and stipulations of previous Treaties. The clear object of the Treaty of Ghent is to ascertain the boundary designated by the Treaty of 1783, and that object it should be the mutual desire of the two Governments to accomplish by all the means at their command.

Although the efforts already made for that purpose have proved unsuccessful, neither parties should be deterred, seeing how deeply the subject affects their amicable relations, from resorting to others more promising in their nature, but which, on previous occasions, have been overlooked.

If after a resort to the plain and universal rule now recommended, it should be found impracticable to trace the boundary according to the Treaty of 1783, it would be time enough, and might then be desirable to enter upon a negotiation for terminating the difficulty by the adoption of a conventional line satisfactory to both parties.

This mode, however, could only be adopted with the special assent of the State of Maine, and it is believed that the probability of such assent in the present state of the negotiation, while on the part of the authorities of that State, no doubt is entertained of the practicability of ascertaining the true line, and while so much confidence is felt in the means now proposed, is too remote to justify any attempt to procure it.

It would also be impossible to reconcile the people of that State to the result of any negotiation, in which should be at once conceded those points respecting which, in the course of his reasoning, it is supposed the arbiter committed the most serious error, and by which he was prevented from coming to a decision by which both parties would have been bound.

The proposition directed by the President, therefore, is to submit the whole subject, so far as it relates to this first point of difference, to the commission mentioned in the note to Mr. Livingston of the 30th of April, and clothed with the same powers as belonged to the commissioners under the Treaty of Ghent, and to the arbiter, in order that, instructed by the introduction of the rule now explained and not adopted by their predecessors, they may have greater means for a satisfactory discharge of their duties.

For a successful termination of the labours of the commission to be instituted under this proposition, an unlimited discretion over all the points

necessary to a proper decision of the subject committed to it, is indispensably necessary; and it must be obvious, that if the new commissioners should be restricted to the reasoning of the arbiter, either in its premises or conclusions, the only object of their appointment would necessarily be defeated.

The Undersigned believes that, in the foregoing observations, it will be found that a sufficient answer has already been given to the suggestion of Sir Charles R. Vaughan, that the objection to the power of the Government of the United States to adopt the line recommended by the King of the Netherlands, will be equally fatal to that suggested by Mr. Livingston. It may not be improper, however, further to observe, that the objection arises from the want of authority in the general Government to adopt a line confessedly different from that called for by the Treaty of 1783; but their authority to ascertain that line being unquestionable, their power to employ all the legal and usual means for its ascertainment is equally clear. It is with this view that the proposition presented by the President, proposes to conform the course to the natural object, whereby the true line of the Treaty would be legitimately ascertained.

On the whole, the Undersigned persuades himself that His Majesty's Government will be disposed to co-operate with the President in another effort for the adjustment of this important subject; and not be deterred from embracing the means now proposed, from an apprehension of difficulties which it is confidently believed are not likely to occur.

The Undersigned avails himself, &c.,

(Signed) LOUIS Mc LANE.

Sir C. R. Vaughan.

&c. &c. &c.

No. 35.

Sir C. R. Vaughan to Viscount Palmerston.—(Received May 5.)

(Extract.)

Washington, March 20, 1834.

AS I wished to avail myself of the earliest opportunity of transmitting to your Lordship a copy of Mr. McLane's answer to the proposals for facilitating the settlement of the boundary, I had not time to consider it attentively before the packet sailed on the 16th instant, by which I forwarded my last despatches.

The decided opinion of Mr. McLane, that no part of the award of the arbiter could be binding upon the American Government, the rejection of the seven subordinate points, growing out of the first of the three distinct main points, submitted to arbitration, and the proposed conditional acceptance only of the two others, though clearly decided according to the terms of the Treaty and of the submission, have induced me to make the observations in reply to Mr. McLane, in a note, a copy of which I have the honor to enclose.

It appears to me that the Secretary of State of the United States will not admit any change in his plan of attempting, by a new and complicated commission of survey, to discover the division of rivers, which might permit the President to run a line of boundary, which would be so nearly according to the terms of the Treaty of 1783, that he could assent to it without reference to the States of Maine and Massachusetts.

Inclosure in No. 35.

Sir C. R. Vaughan to the Hon. Louis McLane.

Washington, March 16, 1834.

THE Undersigned has the honour to inform Mr. McLane, that he has transmitted to His Majesty's Government a copy of the note received from him, dated the 11th instant, in answer to the proposal made by the British Government to the Government of the United States, that both parties should agree to

acquiesce in certain points, decided by the arbiter, which might facilitate the settlement of the north-eastern boundary of the United States.

The Undersigned begs permission to call the attention of the Secretary of State of the United States to some observations, which he wishes to make upon the objections, which are said to be insuperable, on the part of the United States, to an acquiescence in the points, which he has had the honour, according to his instructions, to submit to the American Government.

The adoption of the views of the British Government, by the Government of the United States, was meant to be the groundwork of future proceedings, whether those proceedings were to be directed to another attempt to trace the boundary by a fresh survey of the country, as proposed by the United States, or to a division of the territory depending upon a conventional line.

The Undersigned finds, that, in the note of Mr. McLane, there is a positive objection on the part of the United States, to consider any point of the controversy, as decided by the arbiter, to be binding upon the American Government; that to agree in the seven points enumerated by the British Government would be to acquiesce in the premises, by which the arbitrator had arrived at a conclusion already rejected by the Senate of the United States.

The arbitration of the King of the Netherlands was invited, and accepted in the following general terms: "that His Majesty would be pleased to take upon himself the arbitration of the differences between the two countries." The opinion of the arbiter was asked in the statements of the respective parties, not upon a question involving the whole continuous line of boundary, but upon three separate and distinct points, which were specified. The first of these main points could not be entirely decided by the arbitrator; but he decided seven subordinate points growing out of it, in which the United States have been asked to acquiesce, as preliminary to any further proceedings.

The Undersigned has already had the honour to state in a former note, that the British Government does not conceive that the decision of the arbiter is invalidated, and ought to be set aside entirely, because it has failed to decide one of the three distinct points submitted to him.

Mr. McLane does not admit that the arbiter has decided, as the British Government asserts, two out of the three main points submitted for his decision. In the opinion of the Undersigned, he has clearly decided what ought to be considered as the north-westernmost head of the Connecticut River; but according to Mr. McLane's note, the Government of the United States will only admit it conditionally.

With regard to the third separate and distinct point submitted by the respective parties, the tracing the boundary line along the forty-fifth degree of latitude, in the American Statement; "the question referred is, whether, under the Treaties of 1783 and of Ghent, the old line may be continued to be considered as the boundary of the United States, or whether this shall be surveyed anew in conformity with the late observations of latitude."

The arbitrator decided strictly, according to the terms in which the question was put to him, in the American statement, that it would be right to proceed to fresh operations to measure the observed latitude.

This decision was accompanied with a recommendation, that Rouse's Point, to which the United States had abandoned all claim, should be restored to them. The Undersigned has had the honour to declare the willingness of the British Government, to grant that cession as a part of the preliminary points to be agreed upon by both parties before they proceed to further negotiation.

Without any consideration of the cession of this point by His Majesty's Government, Mr. McLane proposes to dispose of this third point (the line of boundary on the 45th degree of latitude), by both parties agreeing to adopt the old line surveyed by Valentine and Collins previously to 1774. It appears, on reference to the statements delivered to the King of the Netherlands, that both parties suspected the survey of Valentine and Collins of great inaccuracy, and the only motive for retaining it can be that some American citizens may have made settlements upon some nine miles of territory, which a new survey might throw into the possession of Great Britain.

The Undersigned cannot agree with Mr. McLane that the acquiescence of the United States in the seven subordinate points lately submitted by His Majesty's Government would confine the negotiation, *in limine*, to a conventional line, to which the President has no authority to agree; and, notwithstanding the

unlimited discretion which the Secretary of State proposes to give to the commissioners to be appointed according to Mr. Livingston's proposal, not a step can they take unless the two Governments agree upon two of the seven subordinate points, which the Undersigned has enumerated in a former note, as they determine the character of the land they are to discover as dividing waters according to the Treaty of 1783, and what are to be considered as Atlantic rivers.

Whatever may be the reluctance of the United States to consider the decision of the arbiter upon any separate point, as not binding upon either party, because he failed to discover the line of boundary so defectively described in the Treaty, yet it cannot but be agreed that, in all points decided, there is (in the language of the report of the Senate) the impartial opinion of a disinterested judge, selected by both parties to settle a question of great perplexity.

In answer to the observations of Mr. McLane, that on many points the reasoning of the arbiter has been more favourable to the United States than to Great Britain, and that, therefore, acquiescence should equally apply to all the premises assumed, the Undersigned has only to require that they should be stated, as he is confident that if acquiescence in them can facilitate in any shape the object, which now occupies both Governments (the devising means of settling the boundary), they will meet with the most favourable consideration.

From a review of the correspondence which the Undersigned has had the honour to carry on with the Secretary of State, it results that there is a decided determination on the part of the Government of the United States not to abandon the task, which seems to be hopeless to the British Government, of tracing the boundary according to the defective description of it in the Treaty of 1783.

By the VIIIth Article of the Convention of Arbitration it was agreed "That the decision of the arbiter, when given, shall be taken as final and conclusive, and it shall be carried, without reserve, into immediate effect, by commissioners appointed for that purpose by the contracting parties."

Great Britain, in fulfilment of the obligations contracted under that Article of the Convention, announced to the United States her willingness to abide by the award of the arbiter.

It is not for the Undersigned to decide how far the British Government was entitled to insist upon the question of boundary having been finally settled by the decision of the King of the Netherlands. The Senate of the United States, according to the statement of the proceedings given in the eighth volume of Congressional Debates, decided by a majority of only one vote, the numbers being twenty-one to twenty, to decline to adopt the boundary recommended by the King of the Netherlands; and, by a similar majority, the numbers being twenty-three to twenty-two, the Senate decided to advise the President to open a new negotiation with His Britannic Majesty.

When the Undersigned finds so important a measure defeated by a bare majority—when a majority of one only decided the Senate to advise the opening of a new negotiation—when that negotiation was restricted to one inadmissible basis, and accompanied with new pretensions which the British Government could not consent to entertain in connection with the boundary question;—when the plan proposed by the United States for another attempt to trace the boundary of the Treaty is so complicated, and when the points proposed by the British Government are rejected, which were to render that plan more practicable, it is a subject of sincere regret that the award of the arbiter was set aside, which by conferring upon the United States three-fifths of the disputed territory, together with Rouse's Point, made a much greater concession than is ever likely to be obtained by a prolonged negotiation. But it is alleged that an insuperable constitutional difficulty occasioned the rejection of the award, and therefore Great Britain is under the necessity of ascertaining, previously to any further proceedings, how far the General Government has the power to carry into effect any arrangement which may be the result of a renewed negotiation.

The answer of Mr. McLane upon that point is confined to stating that, should a new commission of survey, freed from the restriction of following the due north line of the Treaty, find any where westward of that line, highlands separating rivers according to the Treaty of 1783, a line drawn to them from the monument at the source of the St. Croix river, will be such a fulfilment of the terms of that Treaty as the President can agree to make it the boundary, without a reference to the state of Maine.

The Undersigned trusts that Mr. McLane will receive the observations

which he has thought it his duty to make upon his note of the 11th March, in the same spirit of conciliation, which has marked hitherto the correspondence between the two Governments on the question of boundary.

The Undersigned has the honour, &c.

(Signed)

CHAS. R. VAUGHAN.

The Hon. Louis McLane,
&c. &c. &c.

No. 36.

Sir C. R. Vaughan to Viscount Palmerston.—(Received May 5.)

My Lord,

Washington, March 28, 1834.

I HAVE the honor to enclose the copy of a note, which I have received from the Secretary of State, in answer to the observations, which I thought it right to make upon the contents of his note of the 11th March, in which I was informed that the American Government would not agree in certain points decided by the arbiter, and which His Majesty's Government conceived might facilitate the settlement of the boundary.

To the remark which I made to him, that, upon reference to the account which had been published, of the proceedings of the Senate, when the award of the King of the Netherlands was under consideration, I had found a question distinctly taken, and the award rejected upon a division by a bare majority of twenty-one to twenty, Mr. McLane replies, that I have misapprehended the bearing of that division upon the decision of the Senate.

Though I had stated the numbers correctly, Mr. McLane asserts that the division had no direct application to the validity of the award, and affords no indication of the opinion upon the award, of the persons who constituted the minority of twenty. He informs me that the refusal of the Senate to consent to the execution of the award, was decided by a division upon the resolution contained in the report of the committee, which advised the President to assent to the determination of the King of the Netherlands, and which was negated by a majority of thirty-five to eight.

I have stated to Mr. McLane, in a note, a copy of which is enclosed, that the division had escaped my attention, because the question, when taken, was divided, and encumbered with previous amendments, while upon the division of twenty-one to twenty the question was clearly stated.

The votes which negated the resolution of the committee, were given on the 16th June, and I am reminded by Mr. McLane that a second division (which I find took place on the 23rd of that month) negated by thirty-four to eight, a motion of a Senator, similar in terms to the resolution of the committee. Thus it appears that the award was not only negated by twenty-one to twenty, but that only eight out of forty-three present on the first division, and the same number out of forty-two present on the second division, would consent to the execution of the award.

Mr. McLane declares in the enclosed note, that from the nature of the opinions expressed by the arbiter, his recommendation could not have been carried into effect without the consent of the Senate, which could only be constitutionally given by the concurrence of two thirds of the Senators present.

Your Lordship will perceive that Mr. McLane, in his note, has applied my observations about the complicated manner in which the United States proposed to arrive at a settlement of the boundary, to the adoption of the usual plan for the settlement of disputed questions of location, while it was my intention to apply them to the mode proposed by Mr. Livingston, of selecting and constituting the new commission of survey. His proposal is to appoint a commission of equal numbers, with an umpire selected by some friendly Sovereign, from amongst the most skilful men in Europe, to accompany the commission, and decide upon the spot, all points upon which the commissioners may disagree; or to appoint a commission composed entirely of skilful persons selected by a Sovereign, and to be attended by agents appointed by the respective parties.

Having noticed to Mr. McLane the inconvenient complication of the intervention of a friendly Sovereign, and the expence and difficulty of engaging, in such a commission, the talents and independence necessary for the accomplishment of the object in view, he seems to think that there will be no

difficulty in obtaining the assent of the United States to any modification of Mr. Livingston's plan for constituting a commission which His Majesty's Government may propose.

Mr. McLane declares in his note, that a conventional line of boundary, or a new attempt to find the line of the Treaty of 1783, are the only alternatives; and that the United States have no power to adopt the former without the assent of the State of Maine. The General Government has the constitutional authority to establish the line of 1783; and the President and the Senate are of opinion that it is practicable to ascertain that line; and that it is hopeless to obtain the assent of Maine, to a conventional line, until the impracticability of so doing is proved, after a fresh examination of the country.

Under these circumstances His Majesty's Government is invited by the President to make another effort to find the line of 1783.

I have the honour to be, &c.

Viscount Palmerston, G.C.B.,
 &c. &c. &c.

(Signed) CHAS. R. VAUGHAN.

Inclosure 1 in No. 36.

The Hon. Louis McLane to Sir C. R. Vaughan.

Department of State, Washington, March 21, 1834.

THE Undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Sir Charles R. Vaughan, &c. &c., of the 16th, in answer to that of the Undersigned of the 11th instant, relative to the proposition submitted by direction of the President for the adjustment of the north-eastern boundary, and the Undersigned has also to express his regret that the subject has not presented itself to Sir Charles in the light in which he had entertained the hope it would be viewed.

As Sir Charles R. Vaughan has transmitted for the consideration of his Government, the note of the Undersigned, no necessity is perceived for any other observations, at present, upon the remarks of Sir Charles R. Vaughan, than such as may be proper to correct some misapprehensions into which Sir Charles appears to have fallen, as well in regard to the proceedings in the Senate of the United States, as to the character of the proposition submitted by the President; which apprehensions, should they also be entertained by His Majesty's Government, might have an injurious influence on its deliberations upon a subject so important to the amicable relations between the two Governments.

The Undersigned is more encouraged to make this reply, by the persuasion that, from the spirit in which Sir Charles R. Vaughan has made his observations, he will be ready promptly to correct any error into which, by not sufficiently adverting to the peculiar structure of the institutions of the United States, he may, unintentionally, have been led.

Although Sir Charles R. Vaughan is correct in his statement, numerically, of the votes in the Senate in the two instances which he has specified, he has not adverted to other instances, in the course of the same proceedings, of a far more important and pertinent bearing; and of those which he has specified, he has entirely misconceived their bearing and constitutional effect: hence, he is especially mistaken in inferring, and indeed stating; "that so important a measure was defeated by a bare majority; when a majority of one only decided the Senate to advise the opening of a new negotiation." This inference of Sir Charles arises from his statement "that the Senate of the United States decided by a majority of only one vote, the numbers being twenty-one to twenty, to decline to adopt the boundary, recommended by the King of the Netherlands, and by a similar majority, the numbers being twenty-three to twenty-two, the Senate decided to advise the President to open a new negotiation with His Britannic Majesty."

Now, the misapprehension into which Sir Charles has fallen is two-fold; 1st. In not properly considering the constitutional action of the Senate over such subjects, and in supposing that in any vote of that body, any number of its members within, not one or two, but even twenty-three of a majority, were in favour of adopting the award; and 2ndly, in considering the vote of the Senate upon a question wholly distinct and separate, in all respects, as indicative of the opinion of the Senate in regard to the effect of the award.

The Undersigned has already informed Sir Charles R. Vaughan, "that from the nature of the opinions expressed by the arbiter, his recommendations could not have been carried into effect by the President, without the consent of the Senate;" and it is proper now to observe, that such consent can only be constitutionally given, "provided two-thirds of the Senators present concur." Now, in the first instance, which Sir Charles has specified, the number of Senators present was forty-one, of which number two-thirds cannot be less than twenty-eight; and, therefore, if Sir Charles were correct in supposing the vote in this instance as applying to the validity of the award, and the twenty Senators voting in the negative upon that occasion, to be favourable to its adoption, still the number would be short, not one only, but eight of the constitutional number of two-thirds.

It is obvious, however, from the proceedings to which Sir Charles has referred, that the vote, in this instance, had no direct application to the validity of the award, and affords no proper indication of the opinion of the minority of twenty upon that point. The President could not execute the award without the consent of the Senate, two-thirds of the members present concurring; but this consent must be positively declared, and a failure or omission so to declare it, is tantamount to a rejection. A proposition, inviting or requiring such assent is also of an affirmative character, and the sense or action of the Senate in regard to it, ought regularly to be affirmatively manifested.

Now, the Committee to whom the President's message was referred, and to whose report Sir Charles has alluded, expressed the opinion, that in this case, the United States were not bound by the award, as such, though on grounds of expediency a majority of the Committee were favourable to its adoption; and, therefore, they recommended a positive and affirmative resolution, that the Senate advise the President to express to His Majesty the King of the Netherlands, the assent of the United States to the determination made by him, and consent to the execution of the same. This resolution presented the usual and only proper mode of ascertaining, constitutionally, whether the Senate would consent to the execution of the award, and upon a motion to strike out that part of the resolution expressive of the consent of the Senate, the vote stood thirty-five to eight—eight only concurring in consenting to the execution of the award. Of these eight it is certain that three were of the same majority of the Committee, whose report has been adverted to, who pronounced the award not binding upon the United States; and whether the remaining five supported the resolution from a belief that the award was binding, or concurred with the majority of the Committee in their views of expediency, merely, it is impossible to say, and it is not material to enquire.

It may, therefore, be safely affirmed, that in this vote is to be found the fact that of the forty-three members of the Senate present, eight only would consent to the execution of the award by the President; and from the further proceedings of the Senate, alluded to by Sir Charles, nothing more is to be inferred than a desire on the part of certain members to assign the ground for their refusal to concur, and which might not have operated with others.

These positions derive conclusive confirmation from the vote of the Senate, in a subsequent part of their proceedings, upon the amendment offered by a Senator from Kentucky, to a resolution submitted by a Senator from Maine; the latter resolving that the Senate do *not* advise a submission to the opinion of the arbiter, and the amendment proposing to insert, in lieu thereof an affirmative resolution, "that in the opinion of the Senate, good faith and sound policy require the execution of the award." Of the forty-two members of the Senate then present, eight only supported the amendment, and thirty-four opposed it, whereby the negative proposition of the Senator from Maine, in itself unusual, became more obviously unnecessary, and was for that reason as it may be presumed, withdrawn.

Now, does not Sir Charles perceive from the result of all these proceedings that the Senate not only failed, but by two repeated votes of thirty-five and thirty-four to eight, refused to consent to the execution of the award, and by necessary implication denied its binding effect upon the United States?

The effect, then, of this refusal of the Senate to consent to the execution of the award put it out of the power of the President to execute it, and the further effect as stated in the letter of Mr. Livingston of the 30th April, 1833,

was to leave the high parties to the submission precisely in the situation in which they were prior to the selection of the arbiter.

In this posture of the affair, so far as it regards the award, no farther action by the Senate could be expected or hoped for, and so far as regards the preliminary steps in any future negotiation for the adjustment of this important subject, was not required. The high duty was thereby once more devolved upon the President of exerting his executive power under the constitution, to select a new arbiter, or to devise other means more practicable in their nature, and more likely to attain the objects of both the high parties. The first was deemed altogether useless, from the position assumed by the Government of His Britannic Majesty, as stated in Mr. Livingston's letter already alluded to, and, therefore, it only remained for the President to resort to other means less objectionable, to attain the objects of the Treaty of Ghent, which required the ascertainment of the line of boundary of the Treaty of 1783. It has been already observed that the authority of the President for this purpose existed in virtue of his executive power under the constitution, and independently of the preliminary action of the Senate: but neither the President, nor the Senate, nor both united, had authority without the assent of the State of Maine to agree upon a new and conventional line.

Now, it is clear that in the second instance of the vote of the Senate, to which Sir Charles R. Vaughan has referred, the advice given by that body had no relation whatever to the opinion of the arbiter; but on the contrary, as the Senate had previously refused to concur in consenting to the adoption of the award, suggested only that course, which, in the opinion of the majority, it would be expedient for the President, under the circumstances, to pursue. And if it were proper, which in the opinion of the Undersigned it is not, to enter into any speculation of the reasons by which the minority of twenty two on that occasion were influenced in refusing to give any advice to the President, they might well be supposed to arise either from such advice being unnecessary, or perhaps a disposition with some to insist upon the strict pretensions upon the part of the United States, without farther negotiation. But however unnecessary such advice might be, it nevertheless manifested that, in the opinion of twenty-three members of the Senate, not only deserving, but, from the co-ordinate authority of that branch of the executive power in any ultimate arrangement of the subject, commanding, the highest respect, it was yet practicable to ascertain the line of boundary according to the Treaty of 1783, and that it was advisable that the President should enter upon a new negotiation for that object. This resolution, therefore, did not defeat, "so important a measure," to wit, the adoption of the line recommended by the arbiter, which as has been shewn, was defeated before, though it may be admitted to have restricted, for the present at least, the general discretion of the President in his farther efforts to arrange the difficulty, to a negotiation to fix the boundary according to the line of 1783. And it cannot be too often repeated, or too forcibly impressed upon the mind of Sir Charles R. Vaughan, and upon the consideration of his Government, that any attempt to procure the consent of the State of Maine to a new conventional line after the proceedings of the Senate, and while, in the opinion of so large a portion of that body, the ascertainment of the line called for by the Treaty of 1783, was practicable, would have been utterly hopeless.

It is, however, a consideration of even greater importance, in the present state of the discussion, that, as to the practicability of yet ascertaining the true line of the Treaty of 1783, the opinion of the President concurred with that of a majority of the Senate.

The President has been at no time less sensible of the difficulties attending the settlement of this subject, than of the vital importance of its settlement to the future amity between the two nations; and he has never been unwilling to give every evidence of his solicitude to the full extent of his constitutional authority. He duly appreciates the observation of the Committee of the Senate alluded to by Sir Charles R. Vaughan, that it is a question of much perplexity and difficulty: and he has, therefore, always endeavoured to bring his mind to the consideration of the subject with that firmness and fortitude, no less than with the most friendly disposition, necessary to overcome the difficulties with which it is beset. He perceived, however, that in all the previous efforts between the two Governments to ascertain the boundary according to the line of the Treaty of 1783, and in the deliberations of the arbiter, a natural and uniform

rule in the settlement of disputed questions of location had been altogether overlooked, and he perceived no reason to suppose that it had been present to the minds of the respectable Committee of the Senate in making their report. He could not fail to perceive that in every past effort to ascertain the boundary of the Treaty, the chief, if not the only difficulty arose from a supposed necessity of finding highlands corresponding with the description required by the Treaty, to which a line due north from the monument might be drawn; whereas it was plain that if such highlands could be anywhere discovered, it would be a legal execution of the Treaty to draw a line to them, from the monument, by the most direct route, without regard to the precise course given in the Treaty. Not doubting that the adoption of this principle will remove the chief difficulty which has hitherto embarrassed the subject, it became his duty to urge its adoption upon the Government of His Britannic Majesty, as one, and perhaps the best, expedient which remains for ascertaining the line of 1783, to the mutual satisfaction of the parties.

The Undersigned is unable to perceive in the plan proposed anything so complicated as Sir Charles appears to suppose. On the contrary, next to its conformity with the uniform legitimate principles of surveying in such cases, it is chiefly recommended to the approbation and confidence of the President by its entire simplicity. In fact, the plan requires chiefly the mere discovery of the highlands called for by the Treaty of 1783, which being ascertained, the mode of reaching them, upon the principle now suggested, is so simple, and is so clearly delineated in the diagram presented in the letter of Mr. Livingston of the 28th May, 1833, that no observations of the Undersigned could make it plainer. It is presumed that it will not be contended that the difficulty of discovering such highlands is insuperable. The arbiter himself, with the lights before him, is not understood to have found it impracticable, at least to his own satisfaction, to find highlands answering the description of the highlands of the Treaty; his embarrassment arose from not being able to find them in a direction due north from the monument, and certainly it cannot be more difficult for commissioners on the spot, with the fullest means of personal observation, to arrive at a conclusion as to the locality of the highlands, equally satisfactory to their own judgment.

It would appear from Sir Charles R. Vaughan's note, now under consideration, that the Undersigned's answer of the 11th instant, on the constitutional point, is not sufficiently explicit, being "confined," as Sir Charles supposes, to "stating that should a new commission of survey, freed from the restriction of following the due north line of the Treaty, find anywhere westward of that line, highlands separating rivers according to the Treaty of 1783, a line drawn to them from the monument at the source of the St. Croix river, will be such a fulfilment of the terms of that Treaty as the President can agree to make it the boundary, without a reference to the State of Maine." The Undersigned finds it difficult to be more explicit upon this point than he has been in his observations already made to Sir Charles R. Vaughan, and which, besides the distinction presented in his note of the 11th instant, consist in the assurance that the Government of the United States have the constitutional authority to establish the line of 1783, which shall be designated as such by the commission contemplated in the proposition submitted under the direction of the President.

The want of authority in the Government of the United States, which has been stated as a difficulty to the adoption of the line recommended by the arbiter, arises from the circumstance that that line is not only confessedly different from the original line called for by the Treaty, but would deprive the State of Maine of a portion of territory, to which, according to the line of 1783, she would be entitled. By the proposition of the President, however, a commission is to be raised, not to recommend or establish a new line different from the Treaty of 1783, but, to determine what the true and original boundary, according to that Treaty was, and in which of the two disagreeing parties the right to the disputed territory, originally was.

For this purpose the authority of the original commissioners, if they could have agreed, was complete under the Treaty of Ghent, and that of the new commission, now to be constituted, cannot be less.

It appears to the Undersigned, from a view of the whole subject, that it imperiously becomes both Governments seriously to consider the present posture

of the affair, and their future amicable relations; and, in proportion to the difficulties admitted to exist, to cultivate the disposition necessary to surmount them.

It is not contended that either of the high parties are bound to adopt the line of boundary recommended by the arbiter; and the Senate of the United States have refused, by a vote of great unanimity, to consent to its adoption by the President.

It cannot, with propriety, be contended, that the United States were under greater obligation to take the line recommended by the arbiter, when he himself could not be satisfied of the right of either party, than either Government would have been under, to adopt either of the lines upon which the original commissioners disagreed.

Nothing remains, therefore, but to discard the line called for by the Treaty of 1783, and adopt a new and conventional line, mutually convenient for both parties, or to make a further effort, by means yet untried, but affording reasonable hope of success, to discover the true line of the Treaty of 1783.

To adopt the former alternative the United States have no power without the assent of Maine, and that assent in the present state of the controversy, while there remains a reasonable hope of discovering the true and original boundary, it is not possible to obtain.

It is under such circumstances that the Government of His Britannic Majesty is invited to unite with the President in another effort, aided by the adoption of a plain and easy rule of surveying, to find the line of the Treaty of 1783; and thus finally to remove the chief obstacle to that state of amity, which it is so much the interest of both nations to cherish and perpetuate.

The Undersigned, &c.

Right Hon. Sir C. R. Vaughan,
 &c. &c. &c.

(Signed) LOUIS McLANE.

Inclosure 2 in No. 36.

Sir C. R. Vaughan to the Hon. Louis McLane.

Washington, March 24, 1834.

THE Undersigned, &c. has the honour to acknowledge the receipt of the note of Mr. McLane, &c., of the 21st instant; and he feels himself called upon to offer some explanation of the misapprehension, which it appears that he has entertained of the bearing of the several divisions in the Senate, when the award of the King of the Netherlands was under their consideration.

The Undersigned found in the report, which has been published of the proceedings in the Senate on that occasion, the question distinctly taken, and the award rejected by a bare majority of one vote. The division of thirty-five to eight, which Mr. McLane states was decisive upon the award, as it negatived the resolution in the report of the committee which recommended the acceptance, escaped the attention of the Undersigned, in consequence of that question having been divided and encumbered with amendments. Subsequently, a resolution similar to the one in the report of the committee, the Undersigned now finds was rejected by a vote of thirty-four to eight. The inference drawn by Mr. McLane from these two divisions is, that only eight Senators were in favour of accepting the award; and it had been determined that two thirds of the Senators present must concur in consenting to accept it, which could not, from the nature of the opinions expressed by the arbiter, be carried into effect by the President without the consent of the Senate.

Mr. McLane asserts that the decision of twenty to twenty-one, cited by the Undersigned, had no direct application to the validity of the award, and afforded no indication of the opinion of the award of the twenty Senators who voted for its acceptance, and yet the vote was distinctly taken upon the question, whether the Senate should advise the President to decline to adopt the boundary recommended by His Majesty the King of the Netherlands.

With regard to the observation of the Undersigned, that the mode in which it was proposed by the United States to settle the boundary was complicated, he did not mean to apply it to the adoption of a rule in the settlement of disputed questions of location, but to the manner in which it is proposed by the United States, that the new commission of survey shall be selected and constituted.

The only alternative now being, according to Mr. McLane's note, to decide upon a conventional line of boundary, or to make another attempt to find the line of the Treaty of 1783; and the United States not having the power to adopt the former without the assent of Maine, the Undersigned will seize the earliest opportunity of laying before His Majesty's Government the invitation of the President to make another effort to discover the line of the Treaty.

The Undersigned, &c.

The Hon. Louis McLane,
&c. &c. &c.

(Signed) CHAS. R. VAUGHAN.

No. 37.

Sir C. R. Vaughan to Viscount Palmerston.—(Received July 11.)

(Extract.)

Washington, June 12, 1834.

Mr. McLane has lately expressed to me some impatience to receive the answer of His Majesty's Government to the proposal for settling the boundary.

I begged leave to remind him, that the British Government had not been inattentive to that proposal, that I had had the honour, according to your Lordship's instructions, to invite the acquiescence of the American Government (as a preliminary to any future proceedings) in certain points which were distinctly enumerated, and which it was thought had been satisfactorily decided by the King of the Netherlands. The proposal of the British Government had not been met with that ready concurrence which was expected.

However plain and simple the proposal of the Government of the United States now under the consideration of His Majesty's Government might at first appear, it varied but little from a renewed attempt (declared to be inadmissible) to trace the boundary according to the Treaty of 1783.

Mr. Jefferson, when President of the United States, acknowledged in a message to Congress, dated 17th October, 1803, that the boundaries established by the Treaty of Paris, in the north-eastern and north-western angles of the United States, were too imperfectly described to be susceptible of execution. Under his administration, a Convention for settling the boundary was signed at London on the 12th of May, 1803, by Lord Hawkesbury and Mr. Rufus King, which the Senate would not consent to ratify; but amongst the documents which accompanied that Convention, when it was submitted to the Senate, are the instructions given by Mr. Madison to Mr. King, in which he observes, that the difficulty in fixing the north-west angle of Nova Scotia, "arises from a reference" of the Treaty of 1783, to the highlands which it is now found have no "definite existence." The principal object of the plan proposed by the American Government, is to send a new commission in search of these highlands, and the only deviation from the terms of the Treaty is, that the new survey is to be made westward of the due north line which has been fruitlessly explored by the commissioners under the Vth article of the Treaty of Ghent.

I stated to Mr. McLane that I found, upon reference to a map, that the new commission could not find in their course westward any highlands answering the Treaty description of dividing waters flowing into the Atlantic from rivers which empty themselves into the St. Lawrence; as, so far as the latter part of the description was concerned, the high flat land through which the river St. John passes, must intercept any waters in their course from highlands south of that river to the St. Lawrence. If this was foreseen, and if upon the commissioners failing to discover the highlands of the Treaty south of the St. John, it is expected that they are to continue their examination in the territory north of that river, it should be recollected that Great Britain has always maintained, on undeniable grounds, that the United States have no claim to any territory between the St. John and the St. Lawrence. The American Commissioners engaged in negotiating the Treaty of Paris, were instructed according to the "Secret Journals of Congress," that it was not thought advisable to continue the war merely to obtain territory as far as the St. John. In the old charter of Massachusetts Bay there is no mention of the St. John as the boundary of that colony; and in the ancient charter of Nova Scotia, granted to Sir William Alexander in 1638, all the country is included from the Bay of Chaleur to the Kennebec River.

Upon my stating that it was my *private* opinion that if the proposal of the American Government should be accepted, it ought to be with a restriction upon the commissioners to confine their search after highlands to the territory south of the St. John, Mr. McLane observed, that any such condition would amount to a refusal to accept the proposal.

No. 38.

Viscount Palmerston to Sir C. R. Vaughan.

Sir,

Foreign Office, October 30, 1834.

HIS Majesty's Government have considered, with all the attention which the great importance of the subject demands, the notes addressed to you on the 11th and 21st of March, by Mr. McLane, Secretary of State for the United States, of which copies were enclosed in your despatches of March 12, and March 28, respectively; and I am commanded by His Majesty to instruct you to make the following answer to those communications.

His Majesty's Government perceives with great satisfaction in the language of Mr. McLane's notes, and in his earnestness in pressing upon His Majesty's Government a proposition believed by the President of the United States to be conducive to an adjustment of important differences between the two Governments, a new proof of the friendly sentiments of the Government of the United States towards that of His Majesty, and a fresh manifestation of a desire to confirm and perpetuate the amicable relations now so happily subsisting between the two countries.

Animated by a similar spirit of cordial friendship towards the President, and Government of the United States, and actuated by an unabated and most anxious desire, to arrive at a settlement of this question of boundary by any means not inconsistent with the honour and with the essential interests of Great Britain, His Majesty's Government in replying to the Notes of Mr. McLane, have determined to abstain from expressing all the regret which they feel, at finding that the American Government still declines to come to a separate understanding on those several points of difference, with respect to which the elements of decision are fully before both Governments. But His Majesty's Government cannot refrain from saying that they regret this circumstance the more, because on the one hand, these points of difference are not beset with such difficulties as attend the ascertainment of the highlands described by the Treaty of 1783, and because on the other hand, the settlement of these points could not fail to facilitate the adjustment of the remaining points of difference, by narrowing the field of discussion, and by clearly establishing some of the data, upon which a right determination of those remaining points of difference must depend. Passing by, however for the present, these subjects of just regret, but without in any degree abandoning the argument contained in my despatch of the 21st December, His Majesty's Government will now address themselves exclusively to that proposition of the President, which is contained in Mr. McLane's notes, and in the previous communications of Mr. Livingston of the 30th April, and 28th May, 1833; the proposition, namely, that new commissioners should be appointed, who should be empowered to seek, westward of the meridian of the source of the St. Croix, highlands answering to the description of those which are mentioned in the Treaty of 1783.

The President founds this proposition on what Mr. McLane represents to be, a plain and universal rule for surveying and laying down the boundaries of tracts and of countries, designated by natural objects. This rule being, first to find the natural object, and then to reach that object by the nearest direct course, from any other given point; and with the least possible departure from the particular course prescribed in the original deed or Treaty in which the boundary is described. The President, it is said, does not doubt that with the aid of more accurate surveys of the ground by skilful persons, highlands answering to the definition of the Treaty, may yet be found, and he adds that "should a new commission of survey, freed from the restriction of following the due north line of the Treaty, find any where westward of that line, highlands separating rivers according to the Treaty of 1783, a line drawn to them from the monument at the source of the St. Croix river, will be such a ful-

"filment of the terms of that Treaty, as that the President can agree to make it the boundary without a reference to the State of Maine."

His Majesty's Government think it right, with regard to this proposition, in the first place, to say, that however just and reasonable the rule of surveying here stated by Mr. McLane may seem, they do not consider that rule to be so generally established and recognized as Mr. McLane assumes it to be. His Majesty's Government, indeed, do not recollect any case similar to the present in which the principle here asserted has been actually put in practice; but, on the contrary, they remember a case not merely analogous to that which is now under discussion, but arising out of the same article of the same Treaty of 1783, in which this supposed rule was inverted by the agents of the American Government itself.

The Treaty of 1783 declared that the line of boundary was to proceed from the Lake of the Woods "in a due west course to the river Mississippi."

It was afterwards ascertained, by actual survey, that even the sources of the Mississippi lie south of the latitude of the Lake of the Woods, and that, consequently, it would be impossible to reach the Mississippi by any line drawn due west from that lake. In order to escape from the difficulty thus encountered, it was urged by the American commissioners that the natural object, the Mississippi, should be wholly disregarded; and in the final settlement of that part of the boundary, as it was fixed by the 11d Article of the Convention of October 20th, 1818, the principle now contended for by the American Government was reversed; for, instead of the natural object being made the primary, and the connecting line, the secondary guide; the natural object, namely, the river Mississippi, was put out of consideration; and the connecting line, namely, the line to be drawn due west from the Lake of the Woods, was converted into a primary element of the boundary. It was demonstrated that such a line never could reach the Mississippi at all; but, instead of adhering to the source of the Mississippi as one fixed point, and drawing a new connecting line to it from the Lake of the Woods, which was the other fixed point, the commissioners adhered to the arbitrary line to be drawn due west from the lake, and wholly abandoned the Mississippi, though that river was specifically mentioned in the Treaty as a land-mark.

I have already observed in my despatch of the 21st of December last, that the objection which has been made by the State of Maine to the line proposed by the King of the Netherlands, would seem to be equally applicable to a westerly deviation from the due north line; but, nevertheless, if the President of the United States is persuaded that, notwithstanding any opposition on the part of the State of Maine, he can carry through, on this occasion, the practical application of the principle of surveying he has proposed, and if, as Mr. McLane alleges, no hope remains of overcoming the constitutional difficulty in any other way, at least until this new proposition shall have been tried and found unavailing, His Majesty's Government are ready to forego their own doubts on this head, and to acquiesce in the proceeding proposed by the President of the United States, if that proceeding can be carried into effect in a manner not otherwise objectionable. But in order to preclude all future uncertainty or cavil on matters upon which differences of opinion have arisen, and may arise again, His Majesty's Government would consider it desirable that the principles on which the new commissioners would have to conduct their survey, should be settled beforehand by a special Convention between the two Governments.

There is, indeed, one preliminary question upon which it is obviously necessary that the two Governments should be agreed, before the commissioners to be appointed could begin their survey, with any chance of success; and that question is, what is the precise meaning to be attached to the words which are employed in the Treaty to define the highlands which the commissioners are to seek for. A difference of opinion has heretofore existed between the two Governments with respect to that meaning; and unless the commissioners are agreed upon that point, it is obvious that they never can concur in determining whether any particular highlands which they may meet with in their survey, are actually the highlands intended to be described in the Treaty. Mr. McLane has correctly stated in his note of the 21st of March, that the highlands to be sought for must be *highlands separating rivers, according to the Treaty of 1783*, and in conformity with the words of that Treaty, they must be "highlands which divide those

"rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean." As, therefore, the highlands intended by the Treaty, are to be distinguished from other highlands by the rivers which flow from them; and as those distinguishing rivers are to be known from other rivers by the situation of their mouths, it is obvious that the operations of the surveying commissioners can lead to no practical result, unless it be settled beforehand which are the rivers that fall into the St. Lawrence, and which are those that fall into the Atlantic Ocean.

Now, with respect to the rivers which flow northward into the St. Lawrence, no difference of opinion has arisen between the two Governments. But with respect to the rivers which flow southward into the Atlantic Ocean, a difference of opinion has taken place.

The British Government contend that the Treaty of 1783, established a distinction in this respect, between the Atlantic Ocean and the Bay of Fundy, and that rivers falling into the Bay of Fundy, are not, for the purposes of the Treaty, rivers falling into the Atlantic Ocean.

The American Government on the other hand, has maintained, that, for the purposes of the Treaty, the Bay of Fundy is part of the Atlantic Ocean, and that rivers falling into the bay, may be considered to be rivers falling into the ocean.

I do not deem it necessary to recapitulate in this place the conclusive arguments, by which it has been shewn, in the British statements, which were laid before the arbitrator, and which are now in the hands of the American Government, that the framers of the Treaty of 1783, when they used in the second article, the words "rivers which fall into the Atlantic Ocean," could not possibly have meant to designate any rivers whose mouths were situate to the eastward of the River St. Croix, which falls into the Bay of Fundy. I think it sufficient on the present occasion to advert, in support of this construction of the words of the Treaty, to the striking fact, that whilst the River St. Mary, which was to form the southern boundary of the United States, is described in the IInd Article of the Treaty as falling into the Atlantic Ocean, the River St. Croix, which was to form the eastern boundary, is described, not merely in the same Article of the Treaty, but in the very next member of the same sentence, as falling into the Bay of Fundy; while a little further on in the same Article, the eastern line of boundary, where it terminates at the mouth of the river St. Croix, and the southern line of boundary, where it terminates at the mouth of the River St. Mary, are described as "respectively touching the Bay of Fundy and the Atlantic Ocean." Can it be seriously maintained that, in a Treaty for settling a question of such vast importance, as a boundary between two contiguous States, a matter which of all others imperiously requires preciseness of expression, the terms "Bay of Fundy," and "Atlantic Ocean," should have been thus set, not once only, but twice in the same Article, in pointed opposition to each other, and yet that no real distinction should have been intended to be drawn between them; but that the "Bay of Fundy," and the "Atlantic Ocean," should have been carelessly used as synonymous and convertible expressions? His Majesty's Government conceive that no reasonable doubt can be entertained that where the St. Croix, the eastern limit of the United States, is described as falling into the Bay of Fundy, it is advisedly so described, in contradistinction to the other rivers which are mentioned in the same Article, as flowing into the Atlantic Ocean. But, if the St. Croix, whose mouth is situate at the very entrance of the Bay of Fundy, is not an Atlantic River in the meaning of the Treaty, none of the rivers which discharge themselves to the eastward of the St. Croix, and higher up in the Bay, can possibly be considered as such.

The view which has uniformly been taken of this question by His Majesty's Government, has lately received additional confirmation by the terms of the award of the King of the Netherlands. The opinion expressed in that document, that the Rivers St. John and Ristigouche are not Atlantic Rivers, according to the meaning of the Treaty, although it may not be accepted by the Government of the United States, as carrying with it the authority of an award, is at least, to use the language of the report of the Senate of the United States, "the impartial opinion of a disinterested judge selected by both parties to settle a question of great perplexity."

Considering then the force of the arguments which I have here either stated

or referred to, and adverting to the fact that those arguments have been confirmed by the opinion of an impartial authority selected by the common consent of the two Governments, His Majesty's Government trust that the American Cabinet will be prepared to agree with that of His Majesty, as to the construction to be put upon this passage of the Treaty, and will concur in deciding that the Atlantic Rivers which are to guide the commissioners in searching for the highlands described in the Treaty, are those rivers which fall into the sea to the westward of the mouth of the River St. Croix.

You will represent to Mr. McLane that His Majesty's Government, consider a clear agreement between the two Governments on this point, to be an indispensable preliminary to the establishment of any new commission of survey. Till this point is decided, no survey of commissioners can lead to any useful result; but the decision of this point, turns upon the interpretation of the words of a Treaty, and not upon the operations of surveyors; and, His Majesty's Government having once submitted this point, in common with others, to the judgment of an impartial arbitrator, by whose award they have declared themselves ready to abide, they cannot now consent to refer it to any other arbitration.

I am, &c.

Right Hon. Sir C. R. Vaughan,
 &c. &c. &c.

(Signed) PALMERSTON.

No. 39.

Sir C. R. Vaughan to Viscount Palmerston.—(Received December 8.)

My Lord,

Washington, November 12, 1834.

THE Secretary of State, Mr. Forsyth, requested to see me on the 6th instant, when he stated that the President had directed him to ascertain whether I had received the answer of His Majesty's Government to his proposition for settling the boundary. That he was under an expectation of receiving an answer upon referring to the notes of Mr. McLane of the 11th and 23rd of March last, copies of which I had the honour to transmit in my despatches of March 12 and March 28.

I reminded Mr. Forsyth that the persuasion which had been expressed by Mr. McLane in his notes, that His Majesty's Government would be disposed to co-operate with the President in another effort for the adjustment of the boundary according to the proposition of Mr. Livingston, was appended to an official refusal of the United States to acquiesce in certain preliminary points, to which it was necessary that the two parties should agree, before His Majesty's Government could advert to the proposition of Mr. Livingston; and they were of opinion, as it was clearly stated, that no useful result could be obtained from a new survey until the two parties acquiesced in seven points which were enumerated, and upon which decisions had been made by the King of the Netherlands.

By referring to the correspondence, I observed to Mr. Forsyth, that he would at once see the difficulties which the refusal of the United States to acquiesce in the points submitted by your Lordship must have thrown in the way of giving a decisive answer to Mr. Livingston's proposition.

His Majesty's Government have declared their conviction, that it is useless, after all that has passed, to attempt to trace the line of boundary by the description which is given of it in the Treaty of 1783; yet the only deviation from the terms of the Treaty, which is admitted in the proposition of Mr. Livingston, is a departure from the due north line, but the material point is still strictly adhered to, that of finding the highlands which are designated as the north-west angle of Nova Scotia. With regard to the highlands, I reminded Mr. Forsyth that in 1802 Mr. Madison had acknowledged that they had "no definite existence," and the King of the Netherlands had confirmed the opinion given in the British statement that the north-west angle of Nova Scotia was unknown when the Treaty was concluded in 1783.

Mr. Forsyth observed, that he was not yet prepared to enter into a discussion of the question of boundary. In proof of the sincere desire which actuated His Majesty to settle the boundary so long disputed, I referred Mr. Forsyth to the sacrifices which His Majesty was ready to make by adopting the line of boundary proposed by the King of the Netherlands. Mr. Forsyth seemed to me

to regret the rejection of that line, and, upon referring to the debates in the Senate, I find that he voted for the adoption of it.

I observe in your Lordship's first despatch of the 21st December, 1833, that the British Government is still willing to adopt that line. I should wish to be prepared to meet any overture which may be thrown out during the next session of Congress for revoking the rejection of that line by the Senate, which entirely released His Majesty's Government from any obligation implied by the terms of the VIIth Article of the Convention of Arbitration.

It should be remembered that the north-eastern boundary of the United States is carried by the line proposed by the King of the Netherlands beyond the river St. John, and the denial of the claim of the United States to pass to the north of that river is one of the strongest points maintained in the British statements. It is true that one object of interest to Great Britain, in this question of boundary, is secured by it, namely, an uninterrupted communication between Halifax and Quebec, but the line proposed by the King of the Netherlands passes from the St. Francis River to join the line assumed by the American commissioners under the Treaty of Ghent, which leaves, in its course to the Connecticut River, a narrow strip of land to Great Britain, upon the right bank of the St. Lawrence, in some places not more than thirteen miles wide.

Though the communications received from the Government of the United States, shew a marked desire to remove the possibility of the relations between the two Governments being disturbed by the boundary being left in its present state, they still persist in restricting any negotiation to the impracticable object of tracing the boundary strictly according to the description of it laid down in the Treaty of 1783. They have refused to facilitate the adjustment of the controversy by acquiescing in the preliminary points submitted to their consideration by your Lordship not long since; and it is to be hoped some proposal of compromise, more likely to end in a satisfactory result than their last proposition, will ultimately be made by them.

I have the honour, &c.
(Signed) CHAS. R. VAUGHAN.

Viscount Palmerston, G.C.B.

&c. &c. &c.

No. 40.

Sir C. R. Vaughan to Viscount Palmerston.—Received December 24.)

My Lord,

Washington, November 27, 1834.

HAVING been induced to draw up a summary of the proceedings between the British Government and that of the United States, since the Treaty of Ghent, for the settlement of the boundary, I take the liberty of transmitting a copy of it to your Lordship.

I trust that your Lordship will excuse my calling your attention to the inclosed paper, but I am at a loss to account for the little progress which I have made towards settling the question of boundary since I returned to Washington, and there is every reason to believe, that it will be brought before congress, before the close of the approaching session.

I have the honor to be, &c.

Viscount Palmerston, G. C. B.

(Signed)

CHAS. R. VAUGHAN.

&c. &c. &c.

Inclosure in No. 40.

Summary of the Proceedings for settling the north-eastern Boundary of the United States, with observations upon the present state of that question with the American Government.

BY the 5th Article of the Treaty of Ghent, which was concluded on the 24th December, 1814, it was agreed that Commissioners should be appointed to

trace the line of boundary between His Majesty's North American possessions and the United States, as designated in the Treaty of 1783.

The Commissioners were named in 1816, and they held their first meeting at St. Andrews, in New Brunswick, on the 23rd of September of that year, and they held their last meeting, after which they adjourned, on the 13th April, 1822, having entirely differed from each other in their views of the line to be established. It was agreed by the Treaty of Ghent, that in that case, the Commissioners should make their reports to their respective Governments. The reports of the British Commissioner is dated 23rd October, 1820; and that of the American Commissioners, 13th April, 1822.

It was also agreed by the Treaty of Ghent, that the differences of the Contracting Parties should be submitted to the arbitration of some friendly Sovereign, in the event of the Commissioners failing to ascertain the line of boundary intended in the Treaty of 1783, and a Convention of Arbitration was concluded at London on the 29th September, 1827.

His Majesty the King of the Netherlands accepted the invitation of both parties "to be pleased to take upon himself the arbitration of their differences."

It was agreed, that instead of the voluminous and complicated reports of the Commissioners of Boundary under the 5th article of the Treaty of Ghent, new statements should be submitted to His Majesty the arbiter. The first statements were interchanged between the respective Governments in the course of the year 1829, and they were delivered, together with their final statements, to the King of the Netherlands, in the course of the year 1830.

In these statements, the arguments of both parties were directed to the maintaining of the respective lines of boundary assumed by their Commissioners under the 5th article of the Treaty of Ghent.

Three points were submitted to the arbiter as the points of difference between the two countries.

His Majesty the King of the Netherlands was called upon to decide from these statements,

1st. What was to be considered as the point designated in the Treaty of 1783, as the north-west angle of Nova Scotia, and the line of boundary to be traced thence according to the Treaty of 1783, along the said highlands to the most north-western head of the River Connecticut.

2nd. Which is to be considered as the most north-western head of the Connecticut.

3rd. Whether the boundary line from the Connecticut along the forty-fifth degree of north latitude to the River St. Lawrence, ought not again be surveyed and laid down afresh.

With regard to the first point of difference it was contended in the British statements, in conformity with the report of the British Commissioners under the 5th Article of the Treaty of Ghent, that the north-west angle of Nova Scotia of the Treaty of 1783, was to be found upon the first highlands with which they met, at Mars Hill, forty-three miles from the source of the River St. Croix, where they terminate their due-north line of the Treaty. They proceeded to draw thence according to that Treaty, a line along the broken chain of hills trending westward from Mars Hill to what they considered to be the north-westernmost head of the Connecticut River. This line passed at the heads of the Rivers Penobscot, Kennebec, and Androscoggin, which were considered by them to be the rivers designated in the Treaty of 1783, as falling into the Atlantic Ocean, and that they were divided from rivers emptying themselves into the River St. Lawrence, not immediately, but the line being drawn according to Treaty, "along the said 'highlands,' and those highlands terminating westward at the distance of nearly 100 miles from Mars Hill in high land which separates the Chaudière river which empties itself into the St. Lawrence, from the Kennebec river which falls into the Atlantic, they mediate divide rivers emptying themselves into the St. Lawrence, and therefore sufficiently comply with the terms of the Treaty of 1783.

With regard to the second point of difference, Great Britain contended for establishing the source of the stream which flows into the uppermost lake above Connecticut Lake, as the most north-western head of the Connecticut River.

With regard to the third point of difference in the British statements, it is

contended that the forty-fifth parallel of latitude from the Connecticut to the St. Lawrence, ought to be again surveyed and laid down afresh.

In the American statements it is contended, with regard to the first point of difference, that the north-west angle of Nova Scotia is to be found at a point 144 miles from the source of the St. Croix, following a due-north line, and sixty-six miles beyond or north of the River St. John; that the north-eastern boundary of the United States ought to be traced thence along the elevation of land which lies to the north of that river, leaving in its course to the source of the Connecticut a narrow strip of land to Great Britain, upon the right bank of the River St. Lawrence, in some places not more than thirteen miles wide.

With regard to the second point of difference, it is contended in the American statements, that the head branch of Indian stream should be considered as the north-westernmost source of the Connecticut; and with regard to the third point, instead of consenting to a fresh survey of the forty-fifth parallel of north latitude, the United States adhere to the survey of Valentine and Collins made in 1771-1772. Upon which line it is stated, that a Governor of New York, in 1775, gave a grant of 20,000 acres of land.

The award of the Arbitrator, the King of the Netherlands, was delivered at the Hague on the 10th of January, 1831.

His Majesty determined that the documents exhibited, and the vague and indeterminate stipulations of the Treaty of 1783, did not permit him to adjudge either of the lines of boundary assumed by the respective parties in their statements. His Majesty, it may be collected from the award, was of opinion, that the term highland, applies not only to a hilly or elevated country, but also to land, which, without being hilly, divides waters flowing in different directions;—"that the verb divide, appears to require the contiguity of the objects to be "divided;"—that the ancient delimitation of the British provinces does not afford the basis of a decision; that the source of the St. Croix River, with which the north-west angle of Nova Scotia ought to coincide, was determined only by the declaration of 1798, which indicated that river; that the instructions of congress, when the Treaty of 1783 was negotiating, locate the said angle at the source of the River St. John; that according to Mitchell's map, the latitude of that angle is upon the banks of the St. Lawrence, consequently, that the north-west angle of Nova Scotia was unknown in 1783, unascertained by the Treaty of Ghent, and still remaining to be found.

With regard to the second point of difference submitted to the arbitrator, His Majesty decided that the stream situated furthest to the north-west of the streams, falling into three lakes, the last of which bears the name of Connecticut Lake, must be considered as the north-westernmost head of Connecticut River.

With regard to the third point of difference, the survey afresh of the line of boundary from the Connecticut to the St. Lawrence, along the 45th parallel of latitude north; the arbitrator decided, that it would be proper to proceed to fresh operations to measure the latitude.

As His Majesty the King of the Netherlands was unable, from the documents laid before him, to adjudge either of the lines assumed by the respective parties, he suggested a line of boundary which he conceived it would be expedient for them to adopt.

This line passed in a due north direction, from the monument erected at the source of the St. Croix River, in 1798, to the centre of the River St. John, up that river to the mouth of the River St. Francis, and up the St. Francis River to its source, north of the St. John, and thence till the line should meet the one assumed by the American commissioners under the fifth article of the Treaty of Ghent, when both lines were to be united in one and the same to the source of the Connecticut River.

This line of boundary, proposed by the arbitrator, was most disadvantageous to Great Britain, as it conferred upon the United States three-fifths of the territory in dispute, and it carried their north-eastern boundary beyond and to the north of St. John; while Great Britain insists that the account which has been published in the United States of the negotiations of Paris, which ended in the Treaty of 1783, proves that the United States can have no claim to any territory north of the River St. John.

Besides, the arbiter chose at the same time to propose that Rouse's Point, long since abandoned by the Americans, as clearly within the degree of latitude which was to be the boundary of the British possessions in Lake Champlain, according to the Treaty of 1783, should be restored to the Americans without any apparent reason or equivalent.

His Majesty's Government, in order to put an end to this long dispute about the boundary, did not hesitate to announce to the Government of the United States, their willingness to acquiesce in the line proposed by the King of the Netherlands, in fulfilment of the obligations contracted under the Convention of Arbitration, by the 7th article of which the parties agreed that "the decision of the arbiter, when given, shall be taken as final and conclusive; and it shall be carried without reserve into immediate effect."

The award of the arbiter was delivered at the Hague on the 10th of January, 1831; and on the 12th of that month, Mr. Preble, the American Minister to the Netherlands, without any reference to his Government delivered a protest against it, in order, as he stated, that he might not be presumed to acquiesce in proceedings which were a departure from the power delegated to the arbiter by the parties interested.

Mr. Preble being a native of the State of Maine, which is the State most interested in the decision of the question of boundary, and he having been employed to draw up, with Mr. Gallatin, the final statement to be laid before the arbiter, his protest was calculated to influence the final decision of his Government.

He denied that authority had been given to the arbiter to determine what boundary should be established, if the Treaty of 1783 could not be executed according to its stipulations; and he asserted that such a substitution of boundary had been steadily resisted at Ghent and at Washington.

He denied that the "*ligne des versants*" claimed by the Americans on the border of the St. Lawrence, and the "*ligne des versants*" claimed by Great Britain at Mars Hill, (which he describes as an isolated hill) equally well comport, as the arbiter conceived, with the language of the Treaty.—That no rivers can empty themselves into the St. Lawrence from the highlands claimed by the British, as either the river St. John, or the river Restigouche must intervene.

The award of the arbiter, and the protest of Mr. Preble were communicated at the same time by him to the Governor and Legislature of his native State, that of Maine, and resolutions were passed to prevent, if possible, the President from acquiescing in the line proposed by the arbiter.

Though it was generally understood that the President of the United States was disposed to abide by the award of the arbiter, he avoided the responsibility of deciding upon its validity and when the congress assembled at Washington in the month of December, 1831, he submitted the award to the Senate for their counsel and advice. It was referred to the committee on foreign relations, and Mr. Tazewell, the chairman, made a report on the 21st March, 1832, which concluded with a resolution that the Senate should advise the President, to acquiesce in the decision of the King of the Netherlands. It was not until the 23rd June, 1832, that the Senate came to a vote upon that resolution of their committee, when it was negatived by thirty-five to eight, being more than a majority of two thirds of the Senators present, which is necessary, according to the constitution, to decide questions involving the participation of the Senate with the Executive in transactions with Foreign States. A question favourable to a settlement of the point was afterwards put in another form, and was negatived only by a majority of one.*

The reason given to His Majesty's Government for the rejection of the decision of the arbiter, in a note from the Secretary of State, Mr. Livingston, dated 21st July, 1832, were, that the Senate could not advise and consent to the execution of the award, because the decision of the arbiter was not considered as obligatory—that His Netherlands Majesty not being able, consistently, with the evidence before him, to declare the line of boundary intended by the Treaty, had abandoned the character of arbiter, and had assumed that of a mediator, advising both parties that a boundary which he described should be accepted as one most convenient to both of them.

* See Mr. McLane's explanation of this Vote, p. 54, and Sir Chas. Vaughan's observations upon it, p. 56.

It was stated also in the same note, that the line of boundary suggested by the King of the Netherlands trenches on the State of Maine, and that State controverts the constitutional power of the General Government to circumscribe its limits without its assent.

The Senate, after having rejected the award, recommended it to the President by a majority of twenty-three to twenty-two, to offer to the British Government to open a new negotiation at Washington for the settlement of the boundary, but they restricted the President to treat only for a boundary such as it is described in the Treaty of 1783. At the same time it was intimated by the Secretary of State in his note, dated 21st July, 1832, that arrangements were in progress between the General Government and the State of Maine, which would relieve the former from the constitutional difficulties that have hitherto attended the establishment of a boundary, more convenient to both parties than that designed by the Treaty, or that recommended by His Majesty the King of the Netherlands.

The offer to open a new negotiation at Washington was accompanied by a new pretension brought forward by the Senate, and which was represented by the Secretary of State to be equally conducive to a good understanding between the two Governments as the settlement of the boundary question, namely, the cession to the United States of the free navigation of the River St. John and its tributary streams.

The British Government was convinced that it was useless, after all that had passed, to attempt to trace the boundary according to the description of it in the Treaty of 1783, but that was the only basis upon which the President could treat, and that basis was inadmissible.

With regard to the constitutional difficulty started by the State of Maine, that State could have no other title to the disputed territory, than that to be derived from the Treaty of 1783, and if the Treaty is found to have left that title imperfect, the assumption that the territory claimed under it is the territory of Maine, falls to the ground. It should be remembered that the line proposed by the King of the Netherlands was traced entirely through the territory which has remained in dispute since the conclusion of the Treaty of 1783, and no part of which has been ever yet withdrawn from the exclusive possession of Great Britain.

With regard to the new pretension of the navigation of the River St. John, His Majesty's Government declared that it was impossible to admit the principle upon which it was attempted to treat that question as necessarily connected with the boundary question.

In a note from Mr. Livingston, the Secretary of State, dated 30th April, 1833, it was stated that the navigation of the river St. John was introduced only in the view of its forming a part in the system of compensation in the negotiation for a more convenient boundary, if that of the Treaty of 1783 should be abandoned, and that the Government of the United States consented not now to insist upon it.

With regard to the arrangements announced by Mr. Livingston to be in progress between the General Government and the State of Maine, an account of the proceedings of the Governor and Legislature of that State has been given in the American Annual Register for 1831, 1832, published at Boston 1833.

It appears that a message was delivered on the 24th February, 1832, by the Governor of Maine to the House of Representatives of that State, informing them that he had been given to understand that the award of the arbiter would be eventually adopted by the General Government, and that it had been proposed that Maine should cede to the United States her claim to the territory which lies northward and eastward of the line recommended by the arbiter for an ample indemnity, in order that the General Government might make such arrangement with Great Britain as should comport with the interests of the United States. The Governor therefore submitted to the Legislature the expediency of authorizing their agent at Washington to make an arrangement for an indemnity with the General Government, which would relieve their relations with Great Britain from much embarrassment, and put an end to those collisions with the British authorities, which, if continued, must inevitably prevent the settlement of the territory, and endanger the peace of the nation. It was declared by the Governor, that it was the decided and unanimous opinion of the agent of Washington, and of the delegation of the State in congress, that such an arrangement should be made by which the State would be amply remunerated in a pecuniary point

of view for the loss to be sustained, and the principle would not be abandoned for which the State had contended that the United States, or General Government, have not the constitutional power to alienate any portion of the territory of a State without its consent.

It was at the same time recommended by the Governor, that the State of Massachusetts should be invited to unite in the proposed arrangement. The whole territory of the State of Maine was formerly a part of Massachusetts, which purchased in the year 1674, the grant of Charles I, of the province or county of Maine to Fernando Gorges, and that State, by the act of separation, retained the fee simple of a moiety of the wild lands, but, the residue and the entire sovereignty and jurisdiction was vested in Maine, which was admitted into the Union on the 15th March, 1820, having been thus constituted a separate State by a cession of a part of Massachusetts.

The legislature of Maine promptly acceded to the measure recommended by their Governor, but the legislature of Massachusetts declined to co-operate, as the Governor of Maine refused to communicate some confidential letters received from their agent at Washington.

When further explanation was required of the arrangement alluded to with Maine, the answer was in Mr. Livingston's note of the 21st July, 1832, that the anticipation entertained of that arrangement had not been realized.

The American Government did not consider it hopeless to discover the boundary intended by the Treaty of 1783, and it was proposed to avoid the difficulties arising from the prejudices of negotiators in favour of the construction put upon the Treaty by their respective Governments, and the want of local knowledge which may have countervailed the advantage which was to be derived from a sovereign arbiter, by appointing a new commission consisting of an equal number of commissioners, with an umpire, selected by some friendly sovereign, from amongst the most skilful men in Europe, to decide, on all points, on which they disagree; or by a commission entirely composed of such men, so elected, to be attended in the survey and view of the country, by agents appointed by the parties, "Impartiality, local knowledge, and high professional skill would thus be employed, which, though, heretofore separately called into the service have never before been combined for the solution of the question."

In a note from Mr. Livingston, dated 28th May, 1833, it is stated in further development of his proposal, that the President is willing that the commission shall be restricted to the simple question of determining the point designated by the Treaty, where highlands divide the rivers mentioned in the Treaty, to which point wherever it may be found, a straight line shall be drawn from the monument at the source of the St. Croix, and that this line, as far as it extends, shall from part of the boundary in question: that they shall then trace the line along the highlands and fix on the point designated as the north-western-most head of the Connecticut River.

At the same time that it was thus proposed that the new commission should be authorized to discard the due north line from the St. Croix River of the Treaty, any deviation from it eastward, or on the side of New Brunswick, was provided against. In a note from the successor of Mr. Livingston, as Secretary of State, Mr. McLane, dated 5th June, 1833, it is stated no limitations were to be put upon the course to be pursued by the new commission, but such as are required by a faithful adherence to the description of boundary in the Treaty of 1783. The Commissioners are to seek for and find, in the first place, the highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, and when these shall be found in any part of the disputed territory, north or south of the St. John River, a line is to be drawn from the monument to that point of the said highlands which shall be nearest to the due north line.

After an attentive and deliberate consideration of the communications on the subject of boundary made by the Government of the United States, the British Minister was instructed, in a despatch dated 21st December, 1833, received at Washington on the 10th February following, to draw the attention of the Government of the United States, to some considerations, before adverting to the proposition for a new commission of survey,

Nothing, it was stated, but a sincere spirit of conciliation could have induced His Majesty's Government to adopt the arrangement recommended by the King of the Netherlands, because the boundary he proposed would assign to the United

States more than three-fifths of that disputed territory, to the whole of which, according to the terms of the award itself, the title of the United States is defective in the same degree as that of Great Britain.

The first point submitted to the arbiter was, which is the spot designated in the Treaty as the north-west angle of Nova Scotia; and which are the highlands dividing rivers that empty themselves into the St. Lawrence, from rivers falling into the Atlantic, along which highlands the line of boundary is to be drawn to the north-west head of the Connecticut River.

The second point, which is the north-western head of the Connecticut river.

The third point, which is the boundary to be traced from the river Connecticut, along the parallel of the 45th degree of north latitude to the river St. Lawrence.

The failure to decide the first point ought not to invalidate the decision given by the arbiter upon the second and third points. Upon the first point he has declared that it is impossible to find a spot, or to trace a line which shall answer the description in the Treaty, of the highlands, and of the north-west angle of Nova Scotia, but in the course of his reasoning upon these points, His Majesty's Government were of opinion that the arbiter had decided several questions upon which the two parties entertained different views, and that the spirit of the agreement, to make the reference, requires, that they should acquiesce in these decisions, their doing which will clear away several points of difference and facilitate the amicable adjustment of the remaining.

1st. The arbiter is of opinion that the term "highlands" may be applied to a tract of land, which, without being hilly, divides waters flowing in different directions.

2nd. The arbiter has expressed his opinion that it is of no use to enquire what were the ancient boundaries of the North American Provinces, which were not maintained by the Treaty of 1783, and had never been distinctly ascertained.

3rd. The north-west angle of Nova Scotia had not been ascertained, nor was it known in 1783; it is an angle still to be found.

4th. No argument can be adduced from the exercise of the rights of sovereignty, over the fief and over the settlements of Madawaska.

5th. The highlands should divide immediately and not mediately, rivers flowing into the St. Lawrence from rivers flowing into the Atlantic.

6th. Rivers falling into the Bay of Chaleurs, as the Restigouche does, or into the Bay of Fundy, as does the St. John, cannot be considered as rivers flowing into the Atlantic.

7th. Neither the line of boundary claimed by Great Britain, nor that claimed by the United States, can be adjudged as the true line.

His Majesty's Government were willing to restore Rouse's Point, but they conceived that it would be necessary to adopt the decision of the arbiter upon the above-enumerated seven points, before any satisfactory or useful result could be obtained from the local survey proposed by the American Government.

His Majesty's Government thought that they were entitled to claim from the Government of the United States an acquiescence in these decisions, as they are enumerated, of the arbiter; and that as a preliminary to any attempt to settle the remaining points by negotiation, they ought to be satisfied that the General Government is possessed of the powers necessary for carrying into effect any arrangement upon which the two parties might agree. The difficulty which prevented the United States from acquiescing in the determination of the King of the Netherlands, namely, that His Netherland Majesty's proposed line of boundary did not agree with that which is described in the Treaty, would equally apply to a line drawn, as Mr. Livingston has proposed, to the westward of the line mentioned in the Treaty as to be drawn due north from the source of the River St. Croix.

The President of the United States declined acquiescing, as proposed by His Majesty's Government, in the seven above-mentioned decisions, growing out of the first point of difference submitted to the arbiter; and the President also denied that the two remaining points of difference between the two countries which had been submitted to the arbiter had been decided, as assumed by His Majesty's Government.

The Secretary of State, Mr. McLane, in his answer, dated 11th March, 1834,

expressed his regret that it should still be considered by His Majesty's Government that any part of the opinion of the arbiter is obligatory upon either party. The only proposition in which the United States was disposed to acquiesce, was the adoption of the stream decided by the arbiter to be the north-westernmost head of the Connecticut River; and this only on condition that His Majesty's Government should accede to Mr. Livingston's proposal for a new commission of survey.

With regard to the third point, which His Majesty's Government thought sufficiently decided by the arbiter, who recommended that the parallel of the 45th degree, north latitude should be re-surveyed, the United States insist upon adhering to the survey of Valentine and Collins, because grants of land have been made by the respective Governments on both sides up to that line. That line, of Valentine and Collins, the president would consent to adopt, if his proposition should be embraced for a new survey.

To acquiesce in the seven subordinate points would be, in the opinion of Mr. McLane, to defeat the ascertainment of the boundary, according to the Treaty of 1783, which was the object of the president's proposition, and would confine the negotiations, in limine, to a conventional line, for which the institutions of the United States would not permit the president to treat, and which cannot be resorted to until it is found impracticable by the proposed commission of survey to trace the boundary according to the Treaty of 1783, and then it is a measure which can only be adopted with the special assent of the State of Maine.

No notice is taken of His Majesty's willingness to cede Rouse's Point as one of the preliminaries. Mr. McLane observes in his note, that the arbiter has expressed his opinion "that it will be suitable to proceed to fresh operations to measure the observed latitude; but in such a manner that the fort at Rouse's Point shall be included in the territory of the United States."

No satisfactory answer was given in Mr. McLane's note, to the enquiries of the British Government, respecting the power of the president to make a final arrangement. It is stated only that, should the new commission succeed in finding highlands separating rivers according to the Treaty, the president can agree to make the line drawn to them the boundary, without reference to the State of Maine, because it will be a line traced sufficiently, according to the Treaty of 1783.

The president of the United States having in a message, July 1834, to Congress, characterised the correspondence which had been carried on under the instructions of Lord Palmerston, since the month of April 1833, respecting the boundary, as a negotiation which had been in progress ever since; the British Minister at Washington was instructed to be prepared, should any communication be made to him from the President on the question of boundary, to declare that His Majesty's Government considered the communications which they have made to the American Government, as having turned entirely upon preliminary points, and as having left the two parties equally free, as to the question whether fresh negotiations shall now be entered into for the settlement of the matters in dispute, and also as to the choice of place where such negotiations are to be held.

The preceding summary of the proceedings for settling the north-eastern boundary of the United States, clearly shows that the delay in adjusting the differences between Great Britain and the United States is not attributable to the former, but to the determination of the United States to adhere to an impracticable mode of settling it, namely, the tracing of the line of boundary, according to the description laid down in the Treaty of 1783. This was the only basis of the new negotiation offered by the President, to be opened at Washington, after the rejection by the Senate of the line of boundary proposed in the award of the King of the Netherlands, as a suitable compromise, and which Great Britain had announced her willingness to adopt, though it would sacrifice part of her just claims. To this inadmissible basis of a new negotiation, a new pretension was added, as equally conducive to the preservation of the good understanding between the two nations, namely, the navigation of the river St. John and its tributary streams, though the whole course of that river from its source to its mouth, flows through a country hitherto in the exclusive possession of Great Britain. As Great Britain refused to admit the principle of treating about the navigation of the St. John, as necessarily connected with the question of boundary, that pre-

tension was withdrawn, and the proposal subsequently made to constitute a commission of survey to search after highlands and the north-west angle of Nova Scotia; with this only deviation from the description in the Treaty of 1783, that the commissioners should not be restricted to the due north line, as is stated in the Treaty, but should be allowed to explore the country anywhere westward of that line. This is not such a deviation from the strict terms of the Treaty as can lead to a hope, after all that has passed, that a new commission will discover the features of the boundary, as they are described in the Treaty of 1783.

The delineation of the limits of the ancient and original settlements of European States in North America, was necessarily vague and obscure. The British settlements at first were divided into North and South Virginia. That part of New Brunswick involved in the question of the north-eastern boundary of the United States, was formerly the French Province of Acadie, which was ceded to Great Britain by the 12th article of the Treaty of Utrecht; and the limits of that province were a source of controversy between Great Britain and France, until the cession of the remaining French North American possessions by the Treaty of 1763. Afterwards the uncertainty of the delimitations of the North American settlements was a constant source of altercation between their provincial Governments.

In this state of uncertainty of the colonial limits, and no actual survey of the country having taken place, the commissioners who framed the Treaty of 1783, were called upon to trace a boundary between provinces which were to remain in possession of Great Britain, and provinces which were constituted by that Treaty into independent states, with no better map of the country before them than the one published in 1753, by Mitchell, under the protection of General Pownall, governor of New England.

One of the thirteen colonies acknowledged by the Treaty of 1783, by Great Britain, to be independent, was that of Massachusetts Bay. It would be reasonable to conclude that the chartered limits of Massachusetts would at once define the intended north-eastern boundary of the United States, but the limits between Nova Scotia and Massachusetts had never been established, and when the Treaty of 1783 was made, the charter of William and Mary, of 1691, was in force, which incorporated into one province by the name of the province of Massachusetts Bay in New England, the old colony of Massachusetts Bay—the colony of New Plymouth—the province of Maine—the territory called Acadie, or Nova Scotia—and all the lands lying between Nova Scotia and Maine.

According to the interpretation of this charter by the United States, the river St. Lawrence was the northern boundary of the United States. But it never could be the intention of the framers of the Treaty to confer upon the United States all the territory included in the charter of 1691. Their object was to draw a new line, and the arbiter, the King of the Netherlands, after a due consideration of the statements submitted to him, declared in his award that the arguments drawn from the ancient delimitation of the provinces were inconclusive.

With regard to the accuracy with which the boundary was described in the Treaty of 1783, no less than four articles of the Treaty of Ghent contain provisions for ascertaining and tracing, by special commissions, as many portions of the line of boundary intended in the former. With regard to the north-eastern boundary of the United States, still disputed by the respective parties, the point of departure was confidently laid down in the Treaty as at the source of the St. Croix river, but the river which was to be considered as the St. Croix river of the Treaty was not ascertained until 1798, by a commission constituted under a Treaty concluded in 1794.

The defective description of the boundary in the Treaty has been acknowledged by both parties. The north-eastern boundary of the United States, depends upon ascertaining the position of highlands, dividing rivers which empty themselves into the river St. Lawrence from rivers which fall into the Atlantic Ocean. Upon such highlands the north-west angle of Nova Scotia, according to the Treaty, is to be found.

In the year 1802, Mr. Madison, at that time Secretary of State for the United States, in his instructions to Mr. Rufus King, who signed a Convention with Lord Hawkesbury, in London (which was never ratified by the United States) observed, that the difficulty in fixing the north-west angle of Nova Scotia

"arises from a reference in the Treaty of 1783, to highlands which it is now found have no definite existence."

In a message to Congress, dated October 17, 1803, the President of the United States, Mr. Jefferson stated, that "a further knowledge of the ground in the north-eastern and north-western angles of the United States, has evinced that the boundaries established by the Treaty of Paris, between the British territories and ours, in those points, were too imperfectly described to be susceptible of execution."

Commissioners of boundary, under the fifth article of the Treaty of Ghent, in the month of September, 1816, assembled to explore the due north-line from the source of the St. Croix, and when they finally adjourned their meetings on the 13th of April, 1822, they could not agree upon the position of the highlands, and of the north-west angle of Nova Scotia, of the Treaty of 1783.

Since the reports of the commissioners were delivered to their respective Governments, the King of the Netherlands has declared it to be his opinion, after a due consideration of the statements submitted to His Majesty, that the north-west angle of Nova Scotia was unknown when the Treaty of 1783 was concluded.

Thus it appears, that after upwards of fifty years of controversy, the point of the highlands due north of the source of the St. Croix River, designated in the Treaty of 1783, as the north-west angle of Nova Scotia, has not yet been ascertained. Yet after all that has passed, the United States persist in restricting any negotiation between the two countries for settling the boundary to a renewed effort to trace their north-eastern boundary according to the description of it laid down in the Treaty of Paris. They attribute the failure hitherto to ascertain that line to the neglect of the common rules usual in surveying, in order to settle disputed locations, which consists in finding, first, the natural object to which the line of boundary is to be drawn. The natural object in the Treaty of 1783 is, the highlands which have hitherto been sought for upon the due north line from the St. Croix. It is now proposed by the United States to send a special commission, selected from scientific persons in Europe, with permission to discard the due north-line of the Treaty, and to explore the disputed territory in search of the highlands any where westward of that line; and in answer to the suggestion that the State of Maine may object to any such departure from the strict terms of the Treaty, it is stated that a line drawn from the St. Croix to highlands, wherever they may be found, west of the north-line, and either south or north of the river St. John, will be such a compliance with the terms of the Treaty, that the President will feel himself authorized to establish it as the boundary, without reference to the State of Maine.

The British Government have hitherto insisted upon the highlands of the Treaty being sought for exclusively south of the St. John river, and the United States, according to Mr. McLane's note of the 5th of June, 1833, have, "with equal confidence and pertinacity, insisted upon seeking for them exclusively north of that river." The justice of the pretension of the Americans to do so may be ascertained by a reference to the British statements laid before the arbiter.

The instructions of congress to the American commissioners employed to negotiate at Paris the Treaty of 1783, and which are to be found in the third volume of the "Secret Journals of Congress" shows that it was not thought advisable to continue the war in order to obtain the territory bounded by the St. John river. There was no question of a claim to any territory beyond that river, but ever since the report of the commissioners of boundary was made in 1822, the United States have contended that the highlands of the Treaty are only to be found upon an equivocal height of land sixty-six miles north of the St. John, on the boundary of Lower Canada, because a division of rivers is mentioned in the King's proclamation of 1763, and the Quebec Act of 1774, which established that boundary in somewhat similar terms as those to be found in the Treaty of 1783. Though Great Britain offered to allow the north-eastern boundary of the United States to be carried beyond or north of St. John, when she was willing to adopt the line of the King of the Netherlands, the sacrifice of just claims in order to acquiesce in a compromise suggested by the arbiter, and which was rejected by the United States, does not imply any acknowledgment of the right of the United States to a boundary which they never contemplated when the Treaty of 1783 was negotiated.

Though the question of boundary involves the right to the possession of 10,000 square miles of land,—the land in question is covered with a forest of trees. It is not settled, nor can it be settled until by the adjustment of the boundary, the disputed title is adjudged to one of the respective parties. Until that shall take place both Governments are under an implied engagement to preserve the disputed territory in its present state.

Though the communications on the boundary question received from the Government of the United States within the last two years are full of professions of a sincere desire to remove the possibility of the relations between the two Governments being disturbed by leaving the boundary question unsettled, yet, after all that has passed, the Americans persist in restricting any negotiation for the settlement of so important a question, to a renewed effort to trace their north-eastern boundary strictly according to the description of it laid down in the Treaty, which His Majesty's Government have declared to them to be hopeless.

Great Britain is entirely released from any obligations contracted under the seventh article of the Convention of Arbitration, to abide hereafter by the line of boundary proposed by the King of the Netherlands. It has been rejected by the United States, and can no longer be considered as the least measure of concession, which Great Britain will grant for the sake of adjusting this difference between the two nations. The line of the King of the Netherlands carries the boundary of the United States beyond the St. John, and into the neighbourhood of the St. Lawrence, and it has been clearly shewn in the British statements, that the United States cannot have a claim to any territory north of that river.

(Signed) CHAS. R. VAUGHAN.

No. 41.

Sir C. R. Vaughan to Viscount Palmerston.—(Received January 12, 1835.)

(Extract.)

Washington, December 2, 1834.

ALTHOUGH a regular packet will not leave New York for Liverpool before the 8th instant, I shall send this despatch to New York this day that it may be forwarded to your Lordship by the first vessel which may leave that port for England, in order to transmit to your Lordship a copy of the annual message of the President of the United States, which was this day delivered to Congress.

The notice taken in the message of the relations with Great Britain, consists in stating that the question of the north-eastern boundary is still pending, and that the proposition made in accordance with the resolution of the Senate, for the establishment of a line according to the Treaty of 1783, had not been accepted by the British Government, but a hope is indulged that an adjustment may be effected on the basis of that proposition

Inclosure in No. 41.

Extract from the Message of the President of the United States to Congress.

THE question of the north-eastern boundary is still pending with Great Britain, and the proposition made in accordance with the resolution of the Senate for the establishment of a line according to the Treaty of 1783, has not been accepted by that Government. Believing that every disposition is felt on both sides to adjust this perplexing question to the satisfaction of all the parties interested in it, the hope is yet indulged that it may be effected on the basis of that proposition.

1st December, 1834.

No. 42.

Sir C. R. Vaughan to Viscount Palmerston.—(Received January 14, 1835.)

My Lord,

Washington, December 12, 1834.

I HAVE the honour to acknowledge the receipt, on the 8th December, by way of Liverpool, of your Lordship's despatch of October 30, in answer to the communications made through me, to the Government of the United States, upon the subject of settling the north-eastern boundary of the latter.

I waited upon the Secretary of State of the United States, Mr. Forsyth, and allowed him to read your Lordship's despatch, which I afterwards stated in the form of an official note, and I begged him to remark that it was dated the 30th of October, and that it would have been received previously to the meeting of Congress, had the packet-ship, by which it was sent, had a more favourable passage.

Mr. Forsyth was not prepared, on such an occasion, to give any opinion upon the contents of your Lordship's despatch, but he expressed his regret that the Senate had not acquiesced in the line of boundary proposed by the King of the Netherlands.

I have the honour to be, &c.

Viscount Palmerston, G.C.B.

(Signed)

CHAS. R. VAUGHAN.

&c. &c. &c.

No. 43.

Sir C. R. Vaughan to the Duke of Wellington.—(Received February 6.)

My Lord Duke,

Washington, January 12, 1835.

THE question of boundary between His Majesty's North American Possessions and the United States, having been the subject of an incidental discussion in the House of Representatives, I have the honor to enclose a copy of the report of the debate as given in the "National Intelligencer."*

Mr. Lincoln of Massachusetts (formerly Governor of that State) offered a Resolution on the 24th December, that the President should be requested to communicate the correspondence between the British Government and the United States, which may have taken place since the latter rejected "the advisory opinion of the King of the Netherlands;" together with any information respecting the exercise of jurisdiction by British authorities over the disputed territory, and any correspondence in his possession between the General Government and the State of Maine, on the subject of boundary.

Mr. Lincoln having been called upon by a representative from Maine, to explain his motives for offering this resolution without any previous consultation with the deputation of Congress from that State, observed that Massachusetts was equally interested with Maine in the settlement of the boundary. When that State was separated from Massachusetts, the latter reserved to itself a moiety of the wild uncultivated lands; and that upwards of five millions of acres were involved in the disputed boundary, to which Great Britain "by a monstrous pretension under the Treaty of 1783," has extended a claim.

Mr. Lincoln then entered into a history of the Treaties and Conventions, which had been concluded for the settlement of the boundary, and he stated that the arbiter, to whose decision the question had been submitted, instead of declaring the true position of the highlands where the due north line from the St. Croix was to terminate, had substituted a proposition of his own for the establishment of a new line of boundary. This result of the arbitration was received both in Maine and Massachusetts "with a burst of surprise, indignation and apprehension," and the legislatures of both States remonstrated against its acceptance. It was rejected by the Senate: and he now wished to know on what grounds

* See Class B.

Great Britain had not accepted, as stated in the President's message, the offer recommended by the Senate, to open a new negotiation, and what hope remained ' that the British Government would do that hereafter, which for three years ' she has refused to do."

Massachusetts he observed, was pledged to stand by Maine, and no other boundary would ever be accepted by those States, than the one described in the Treaty of 1783. Large tracts of land in the disputed territory had been offered by these States for sale, and townships and roads marked out, all of which were interrupted, and in deference to the General Government, the States had suspended their rights of possession, pending the arbitration; but they would not be content much longer that this question should remain unsettled. He called upon the house to remember that the inhabitants upon the disputed territory were American citizens, who had acquired their title to their possessions under the State Governments, and they had been molested in their persons and their property by the British authorities of New Brunswick. Mr. Lincoln ended with declaring that if the controversy was not soon ended " the States will re-assert their possessive rights, and collisions will ensue."

The resolution was carried on the 27th December by 88 votes to 79; five out of eight representatives of the State of Maine voting against it. They declared, that they considered it to be an officious interference with their duties; that the granting of the correspondence might do harm, " while a hope remains of a " peaceable adjustment;" and they acknowledged that in the State of Maine there was an " apathy" on this subject, which was in the hands of the executive, and they did not desire to interpose obstacles to its progress and termination.

On the 6th instant the President communicated his answer to the House of Representatives, and I have the honor to enclose a copy of it. He acquainted the House, that it would be incompatible with the public interest to lay before them any communication between the two Governments, negotiations for the settlement of the north-eastern boundary being now in progress.

Your Grace will find the speech of Mr. Lincoln full of exaggerated pretensions which never fail to accompany any allusion to the question of boundary.

As no part of the disputed territory has ever been withdrawn from the sovereignty of Great Britain, in consequence of the defective description of the line of boundary in the Treaty of 1783, American citizens cannot have acquired, justly, a title to any lands, from the State of Maine, or of Massachusetts, as asserted by Mr. Lincoln; and there cannot be any pretence for disputing the uninterrupted exercise of jurisdiction over that territory by the British authorities of New Brunswick.

I am sorry to observe in speeches in Congress, and in the newspapers of all parties published at Washington, a disposition to excite resentment, by representing Great Britain as in forcible possession of territory belonging to the United States, and that American citizens have been imprisoned by British authorities, because they obeyed the laws of their own Government.

Mr. Lincoln declared that the States of Maine and Massachusetts will never consent to any line of boundary, but that which is laid down in the Treaty of 1783; and so long as the basis of that Treaty is adhered to rigidly by the Americans, the greatest difficulty will attend every attempt to adjust this perplexing controversy.

Mr. Forsyth, the Secretary of State, was in the Senate in 1832, and voted for the acceptance of the line of boundary suggested by the King of the Netherlands, and I am convinced that he sincerely regrets the rejection of it by the Senate. The decision of the King of the Netherlands, and the willingness of His Majesty's Government to acquiesce in it, seem likely to embarrass any future negotiation. When I urge the necessity of abandoning the terms of the Treaty, and I venture to suggest a conventional line of boundary, I am met with the objection that it is not equal to the terms proposed by the arbiter. Now, the decision of the arbiter was acquiesced in by His Majesty's Government, in fulfilment of the obligations contracted under the Vllth Article of the Convention of Arbitration, and the United States having rejected the decision, Great Britain is entirely released from any reference in a future adjustment to that measure of reconciliation. A sufficient manifestation of an earnest disposition on the part of His Majesty's Government to bring to a satisfactory adjustment the dispute about boundary, has been made by a declaration of

willingness to accept the very disadvantageous line proposed by the King of the Netherlands; by the proposal for acquiescence, previously to future proceedings, in certain preliminary points in which the United States refused to acquiesce; and in the late proposal for agreement on some points, still under the consideration of the Government of the United States, as preliminary to accepting the President's last proposal, and to which I have not yet received an answer.

I trust that the General Government will continue effectually to controul the disposition of the legislatures of Maine and Massachusetts, as manifested by Mr. Lincoln, to attempt to obtain either by force or contrivance, possession of any part of the territory, to which their title is defective, at least so long as the two Governments are engaged in bringing their dispute to an amicable adjustment. I have the honour to be, &c.

(Signed)

CHAS. R. VAUGHAN.

His Grace the Duke of Wellington, K.G.

&c. &c. &c.

Inclosure in No. 43.

To the House of Representatives of the United States.

IN answer to a resolution of the House of Representatives, passed on the 27th ultimo, I transmit a report made to me by the Secretary of State on the subject, and I have to acquaint the House that the negotiation for the settlement of the north-eastern boundary being now in progress, it would, in my opinion, be incompatible with the public interests to lay before the House any communications which have been had between the two Governments since the period alluded to in the resolution.

(Signed)

ANDREW JACKSON.

Washington, January 6, 1835.

Report to the President of the United States.

Department of State, Washington, January 5, 1835.

THE Secretary of State, to whom was referred a resolution of the House of Representatives of the 27th ultimo, requesting the President to lay before the House, if in his opinion it is not incompatible with the public interest, any communications which may have been had between the Government of the United States, and that of Great Britain, since the rejection by the former of the advisory opinion of the King of the Netherlands, in reference to the establishment and final settlement of the north-eastern boundary of the United States, heretofore in controversy between the two Governments, and also requesting the President to communicate any information he may possess of the exercise of practical jurisdiction by the authorities of the British Province of New Brunswick over the disputed territory within the limits of the State of Maine, according to the true line of boundary as claimed by the United States, and especially upon that part of the territory which has been incorporated by the Government of Maine into the town of Madawaska, together with such representations and correspondence (if any) as have been had by the executive of that State with the Government of the United States on the subject, has the honor to report, that the Department has no information which has not already been laid before the House, of the exercise of practical jurisdiction by the authorities of the British Province of New Brunswick over the disputed territory within the limits of the State of Maine, nor any other representation or correspondence had by the executive of that State with the Government of the United States on that subject. Representations were made to this Department in the latter part of the year 1833, by the British Minister at Washington, on the part of the authorities of New Brunswick, complaining of infractions of the understanding subsisting between the two Governments in regard to the disputed territory. These complaints, however, on being referred to the Governors of Maine and Massachusetts for explanation, were believed to be without just grounds. There was no complaint on the part of Maine, and the correspondence which took place on the occasion, is not supposed to be within the scope of the resolution of the House.

As the negotiation between the United States and Great Britain, which was commenced in accordance with a resolution of the Senate after the rejection of the advisory opinion of the King of the Netherlands, for the establishment of the north-eastern boundary, is now in progress, it is submitted to the President whether it would be compatible with the public interest to lay before the House any communications which have passed between the two Governments on the subject.

All which is respectfully submitted.

(Signed)

JOHN FORSYTH.

No. 44.

Sir C. R. Vaughan to the Duke of Wellington.—(Received May 20.)

(Extract.)

Washington, April 20, 1835.

I HAVE been for some time in daily expectation of receiving from Mr. Forsyth, an answer to my note, presented at the beginning of the month of December last, calling upon the Government of the United States as a necessary preliminary to further proceedings respecting the proposal of the President for a new survey, that they should acquiesce in the opinion of the King of the Netherlands, that the Restigouche River, which empties itself into the Bay of Chaleurs, and the River St. John, which empties itself into the Bay of Fundy, ought not to be considered as rivers designated in the Treaty of 1783, as falling into the Atlantic Ocean.

I am given to understand by Mr. Forsyth, that the Government of the United States will not acquiesce in that opinion, though I have endeavoured to impress upon him that the proposition of the President cannot be adopted by His Majesty's Government without that point, as well as the principles upon which the new survey is to be conducted, being settled in a special Convention. Great Britain had justly required acquiescence in several points which the arbiter had decided in the spirit of the agreement to a reference. It remains to be seen on what grounds Mr. Forsyth will place the refusal of the United States in his note, which I trust that I shall receive before the next packet will sail from New York.

It is to be regretted, upon a review of the proceedings to settle the boundary, that every effort hitherto made to bring the question to a conclusion, has had the effect of throwing fresh difficulties in the way of a final settlement. I allude to the result of the commissions of 1794 in 1798, the result of the commissions under the Treaty of Ghent, concluded in 1814, and the result of the reference to arbitration in 1831.

The declaration of 1798 fixed the departure of the line, without any consideration of the country through which it was to be drawn, due north, and without ascertaining the existence of the highlands on which it was to terminate. The consequence has been, that afterwards in 1802 and 1803, we find Mr. Madison and Mr. Jefferson asserting that they have no definite existence; and the American commissioners of 1814 showed that, by our having consented to adopt the easternmost branch of that river which they chose to fix upon instead of the westernmost, as the St. Croix of the Treaty, a line drawn due north would not intersect the highlands at Mars Hill, but pass to the eastward of it, and before it could reach any land marked by a division of rivers, they carried it beyond the river St. John, and to the north of it sixty-six miles.

Many rivers in British North America, when they were first discovered, were christened St. Croix, by fixing upon a conspicuous point on the banks the sign of a cross. It is difficult to believe that the St. Croix agreed upon in 1798, was the St. Croix river of the Treaty of 1783; the latter was named because such a river was thought to be the eastern boundary of the colony of *Massachusetts*, not the eastern boundary of the "province of Massachusetts Bay in New England," incorporated by the charter of William and Mary in 1691. It was decided in 1750, according to the memoirs of the British and French commissioners, published in 1755, that the Penobscot river was the boundary of Nova Scotia, or Acadie, for the country frequently passed under both names. It was afterwards asserted that the river Kennebec was the western boundary. Both those rivers have their sources in highlands, which divide rivers falling into the

Atlantic, from rivers which empty themselves into the St. Lawrence. Previously to 1783, highlands of that description had been found by General Arnold, on his expedition to Quebec in 1775. It is stated in the published account of that expedition, that he passed up the Kennebec to its source, and then crossed "a ridge" of land which separates the waters falling into the St. Lawrence from those "which run into the sea." It is fair to conclude that this was the position of the highlands contemplated by the negotiators at Paris, particularly when we recollect that up to 1781 or 1782, the Americans placed the north-west angle of Nova Scotia thereabouts, at the sources of the St. John.

No. 45.

Sir C. R. Vaughan to the Duke of Wellington.—(Received May 30.)

My Lord Duke,

Washington, May 4, 1835.

I HAVE the honor to transmit to your Grace a copy of a note from the Secretary of State of the United States, containing an answer to the observations made in the month of December last, according to instructions received from His Majesty's Government, respecting the question of boundary.

Your Grace will find in the note a recapitulation of the proceedings of the respective parties in substantiating their claims, an examination of the terms of the award, and finally a declaration that the proposal of His Majesty's Government to consider the rivers Restigouche and St. John, as rivers not falling directly into the Atlantic, as inadmissible.

The Secretary of State positively denies, that in the award of the King of the Netherlands, the view taken by His Majesty's Government of the point in dispute respecting those rivers, is sustained. The suggestion which I made in a note to Mr. McLane in 1833, has been favourably noticed by the President, and he has authorized the Secretary of State to declare that had he unlimited control over the question, he would have attended to it in the same spirit in which it was offered. As the President cannot make any other proposition than the one for a new survey, a wish is expressed that some proposal should be made by His Majesty's Government in a form sufficiently definite to enable the President to take the sense of the State of Maine upon it, and the President has directed the Secretary of State to confer with me.

The answer which I have thought it my duty to return to the note contains a refutation of the assertion of Mr. Forsyth, that His Majesty's Government had misinterpreted the terms of the award of the King of the Netherlands. I have acknowledged the desire (which I am convinced is sincere) of the President to do everything within his constitutional competency to settle the boundary, and I have stated my readiness to confer with the Secretary of State, whenever it may be convenient to receive me. As the constitutional difficulties brought forward by Maine are considered as the principal obstacle in the way of a final adjustment, I have, in my note, a copy of which I have the honor to enclose, pointed out that their removal exclusively belongs to the executive branch of the American Government.

It unfortunately happens, that the Secretary of State, leaves Washington to-day, and will be absent for some time. I have, only therefore, been able to see him once. I begged him to inform me, what was the nature of the proposition which it was wished that His Majesty's Government would make in a definite form.

The answer leads me to suppose that it is wished that His Majesty's Government could be persuaded to grant such an equivalent to Maine, for the territory (that the State has no title to) between the American north line of the St. John, and the river St. Francis, which prevented the General Government from accepting the line of the arbiter. Maine attempted in 1832, when the President was disposed to acquiesce in the award, to negotiate with the General Government for such an equivalent as the price to be paid to that State, for waiving the constitutional difficulties. I informed the Secretary of State that if such was the object, I could not believe it possible for His Majesty's Government to consent to purchase the acceptance of the State of Maine, of a line of boundary, which entailed upon Great Britain so great a sacrifice of her just claims, and to which His Majesty's Government never could have consented, but in fulfilment of the obligation contracted under the VIIIth Article of the Convention of Arbitration.

Mr. Forsyth insisted that Maine could not be expected to accept any line of boundary, which should not be better than that which she rejected under the award; and I protest-d, as the award had been rejected, against that concession being ever considered as the least sacrifice Great Britain was to make, in order to conciliate Maine.

I have seen a disposition in former despatches from His Majesty's Government to consent still to acquiesce in the line of the King of the Netherlands, which was so manifestly advantageous to the United States, and I am surprised that a proposal has not been made in the Senate, by this time, to revoke their decision.

I have the honour to be, &c.

(Signed)

CHAS. R. VAUGHAN.

His Grace the Duke of Wellington, K.G.

&c. &c. &c.

Inclosure 1 in No. 45.

The Hon. John Forsyth to Sir C. R. Vaughan.

Department of State, Washington, April 28, 1835.

THE observations of the 8th December, submitted under instructions from the British Government, by Sir Charles R. Vaughan, &c. &c., on the proposition made by the United States, for the settlement of the disputed boundary, between the United States and His Britannic Majesty's North American Possessions, have been laid before the President, and by his direction the undersigned Secretary of State of the United States, has now the honor to reply.

The President reciprocates, most fully, the spirit of cordial friendship towards the Government of the United States and himself, by which Sir Charles R. Vaughan is pleased to assure the Undersigned, that His Majesty's Government is actuated, and sees, with satisfaction, the renewed assurances of its desire to arrive at a settlement of the question of boundary, by any means, not inconsistent with the honor and essential interests of Great Britain. The Undersigned is instructed to repeat, on the part of the President, the expression of his determination to effectuate this object, by all the means within his constitutional competency, which are reconcileable to his views, of what are justly due to the character and interests of the United States.

The President has derived a satisfaction proportionate to his deep sense of its importance, from the success which has attended the past efforts of the two Governments, in removing existing, and preventing the recurrence of new, obstacles, to the most liberal and friendly intercourse between them; and it would be a source of unalloyed pleasure to be able, during the short period which he may remain at the head of the Government, to bring to a conclusion, satisfactory to both parties, a controversy which has been justly described as the only matter of serious difficulty, which is still in contestation between Great Britain and the United States.

The Convention authorizing and regulating the reference of the points of difference to a friendly Sovereign, and the selection of that Sovereign, had been made before the President entered on the duties of his office; but no time was lost in adopting and facilitating all the measures in which his agency could be properly employed to bring that reference to a speedy and satisfactory result. If the distinguished arbiter agreed upon, had found himself able to come to a decision upon the subject, satisfactory to his own judgment, the Government of the United States could not have hesitated, for a moment, whatever might have been its opinion of the justice of such decision, to have united with His Majesty's Government in carrying it, fully and immediately, into effect. Unfortunately this was beyond his power, and the respected arbiter was too sensible of what was due, as well to his own high character as to the parties, to profess to have done, what he found himself unable to accomplish. Believing sincerely, but, as the President cannot but think, erroneously, that he could not discharge the functions of arbitrator, he, from unquestioned motives of friendly regard to the parties respectively, acted in the character of mediator. That the acts or suggestions of the selected Sovereign in the character of mediator, were not binding upon the parties, further than they should, subsequently, respectively agree to adopt them, was a point too clear to furnish ground of dispute between the two Governments, nor was it less

clearly the duty of the President to submit the whole matter as presented by the arbitrator, to the Senate of the United States, for its constitutional advice and co-operation. The recommendations of the arbitrator were rejected by a large majority of that body, and a resolution passed advising the President "to open a new negotiation with His Britannic Majesty's Government for the ascertainment of the boundary between the possessions of the United States, and those of the King of Great Britain on the north-eastern frontier of the United States, according to the Treaty of Peace of 1783." The parties were thus placed, in respect to the disputed boundary in the situation respectively occupied by them before the conclusion of the Convention of the 24th December, 1814, in virtue of which, the various measures that had been successively adopted to bring this controversy to a satisfactory termination were commenced, leaving the President with no other rightful authority for its adjustment than that of opening anew negotiations for the settlement of the question according to the terms and upon the principles of the Treaty of 1783.

The Undersigned is specially instructed to assure Sir Charles R. Vaughan, that the President duly appreciates the prompt suggestion made by him, as His Britannic Majesty's Minister, that a new negotiation should be opened, for the establishment of a conventional boundary, between the two countries, which, while it respected, as far as practicable, their existing pretensions, should secure the best interests of each. Possessing full power over the subject, His Britannic Majesty's Government might, very properly, consult what was due to its uniform professions; and Sir Charles R. Vaughan may assure his Government, that if the President had like powers, he would have met the suggestion in as favorable a spirit as that by which it was prompted. His limited power has been heretofore stated, and the reasons why, under the peculiar structure of our political system, the Federal Government cannot alienate any portion of the territory of a State, without its consent, have been given at large to Sir Charles R. Vaughan, as well as the reasons why, under existing circumstances, and while a hope remains of arriving at a settlement of the question, as originally presented under the Treaty, there is but little prospect that the State of Maine would agree to the establishment of a new line. Thus restricted in the exercise of his discretion, and embarrassed by the difficulties, arising from the failure of anterior efforts, the President has nevertheless given his constant attention to the subject, in the hope of still being able to find some mode by which the protracted controversy may be terminated satisfactorily.

The submission of the whole subject, or any part of it, to a new arbitrator, promised too little to attract the favorable consideration of either party. The desired adjustment was, therefore, to be sought for, in the application, to the controverted question of some new principle, not heretofore acted upon; and the consequent prosecution of investigations hitherto unattempted, because regarded as irrelevant and inapplicable. He thought, and, with respectful deference, to the apprehension of His Majesty's Government, he still thinks, that with the hearty co-operation on the part of His Majesty's Government, the object, which is so desirable to all parties, a fair and equitable settlement of the boundary in dispute, according to the Treaty of 1783, by a faithful prosecution of the plan, which has been submitted, by his directions, to the consideration of His Majesty's Government, is attainable.

By the Treaty of 1783, the boundary between the dominions of the two Governments was to be a line drawn from the source of the St. Croix directly north to the highlands, which divide the rivers which fall into the Atlantic Ocean from those which fall into the river St. Lawrence; the point at which the due north line was to cut the highlands was also designated as the north-west angle of Nova Scotia, thence along the said highlands to the north-westernmost head of the Connecticut river, &c. The ascertainment of the true north-west angle of Nova Scotia, or the designation of the highlands referred to, has been the principal difficulty by which the settlement of the boundary has been so long retarded; and it was the supposed impracticability of satisfactorily accomplishing that ascertainment or designation which prevented the adjustment by the arbitrator. The United States have always contended, that the point to which they have uniformly claimed, is upon certain highlands north of the river St. John, which answers, in every respect, the description given in the Treaty, and is the true north-west angle of Nova Scotia; a claim, which is not intended to be abandoned or weakened by any thing the President has authorized to

be proposed, or said upon the subject. If the highlands now referred to, do, in truth, answer the description, no doubt could be reasonably entertained of the justice of our claim, as there would be a perfect concurrence in the course prescribed, and the natural object designated by the Treaty; but on the part of Great Britain, it has been strenuously contended, that no highlands, answering the description in the Treaty, could be found northward of the river St. John, upon a line running directly north; and it has therefore been insisted that the due north line shall be deemed to terminate to the southward of that river, and at a place called Mars Hill. The President is advised, that it is a rule in practical surveying, which prevailed in this country before the revolution, and has since been, and still is, considered obligatory, that when there is found in the location of the premises described in a deed or any other instrument, a disagreement in the course of a given line, and the bearing of a natural object called for, as its termination, the given course must be made to yield to the given object, and the line closed at the object, in a direction corresponding, as nearly as practicable, to the course prescribed; upon the principle, that the natural object furnishes evidence of the true intention of the parties, which may be relied upon, with more safety than the course, errors in which constantly occur, from the imperfection of the instruments used, or the want of knowledge of those, in whose hands they may have been placed. He has thought this rule might be rightfully and properly applied to the matter now in controversy, and is willing to agree, that if, upon a thorough examination, it shall appear to those appointed by the parties, to make it, that His Majesty's Government is correct in its assumption, that the highlands hitherto claimed by the United States, as those designated by the Treaty, do not answer that description, but that those highlands are to be found, to the west of the due north line, that the boundary line should be closed according to the established rule in practical surveying. Whether there are highlands to be found in a north-westerly course, from the source of the St. Croix, answering better to the description given in the Treaty of 1783, than those heretofore claimed, by the United States, and so clearly identified as to remove all reasonable doubt, remains to be ascertained. No inquiry into this fact, with a view to apply it to the respective and conflicting pretensions of the parties, has hitherto been made. It was under these circumstances, and with such impressions, that Mr. Livingston was authorised to propose to Sir Charles R. Vaughan, for the consideration of his Government, that a new commission should be appointed, consisting of an equal number of commissioners, with an umpire, selected by some friendly Sovereign, from among the most skilful men in Europe, to decide on all points, in which they might disagree; or a commission entirely composed of scientific Europeans, selected by a friendly Sovereign, to be attended in the survey and examination of the country, by agents appointed by the parties. The adoption of this course would, it was urged, have the benefit of strict impartiality in the commissioners' local knowledge and high professional skill, which though, heretofore, separately called into action, have never before been combined for the solution of the question.

In consequence of a wish expressed by Sir Charles R. Vaughan, to be more fully advised of the views of the President, upon the subject of this proposition, he was furnished with a diagram, by which the manner, in which it was intended the line should be run, in the event of highlands being discovered better answering the description of the Treaty than those claimed by the United States, was pointed out distinctly; while to relieve His Majesty's Government from all apprehension of a more extended claim of territory on our part, Mr. Livingston was authorized to disclaim, and did disclaim, all pretensions on the part of the United States, to the territory east of the line, which had been previously run directly north from the source of the St. Croix. Actuated by that sincere desire to effect, in some proper way, the settlement of the boundary in question, by which he had been governed, Mr. McLane was, subsequently, authorized by the President, to propose to Sir C. R. Vaughan, for the consideration of His Majesty's Government, that, if the proposition made by Mr. Livingston, for the adjustment of one of the three points of difference was accepted, the United States would, on their part, consent to adopt the place designated by Great Britain, as the north-westernmost head of the Connecticut river; and would also, as to the remaining point, the line from the Connecticut river to the

St. Lawrence, adopt that which was run by Valentine and Collins, which, it was believed, would not be unacceptable to Great Britain.

The Undersigned does not learn from the communication of Sir C. R. Vaughan, that the justice and reasonableness of the rule of practical surveying, offered, as the basis of Mr. Livingston's proposition, is now disputed, although not considered by His Majesty's Government so generally established and recognized, as was supposed by the predecessor of the Undersigned.

If it should become material to do so, which is not from the present aspect of the question to be anticipated, the Undersigned would find no difficulty either in fortifying the ground occupied by his Government in this regard, or in satisfying Sir Charles R. Vaughan that the instance of a supposed departure from the rule brought into notice by His Britannic Majesty's Government, is not at variance with the assertion of Mr. Livingston, repeated by Mr. McLane. For the present, therefore, he limits himself to this single remark—that the line of demarcation between the United States and the possessions of Great Britain, referred to by Sir Charles R. Vaughan, was not established as the true boundary prescribed by the Treaty of 1783, but was a conventional substitute for it of a parallel of latitude, the result of a new negotiation, controlled by other considerations than those which were to be drawn from that instrument only. Under these circumstances it is, with unfeigned regret, the President learns the decision of His Majesty's Government not to agree to the proposition, made in that spirit of accommodation by which the United States have, throughout, been influenced, without a precedent compliance, on their part, with inadmissible conditions. These conditions were first brought to the consideration of the Government of the United States by Sir C. R. Vaughan's letter to Mr. McLane of the 10th February, 1834, in which it was stated that as the arbiter in the course of his reasoning on the main point, had expressed his opinion upon several subordinate questions having a direct bearing thereon, these opinions regarded by His Majesty's Government as decisions, ought to be acquiesced in by the parties, before any steps are taken to carry the President's proposition into effect. These opinions, as stated by Sir C. R. Vaughan, were found to be seven in number, embracing, substantially, every suggestion of the difficulties the arbitrator had found and expressed in yielding his assent to the American location of the disputed line. Sir C. R. Vaughan has already been put in possession of the President's views upon the proposal of His Majesty's Government. The President sincerely believes that the new process of investigation proposed by him, might under the control of the principle of practical surveying developed, lead to a settlement of this agitating question, which, as it would be legally and fairly made according to a long established and well known rule, prevalent equally among the citizens of the United States and the subjects of His Britannic Majesty, ought to be, and he confidently trusted would be, satisfactory to all parties. Under this conviction, and being moreover most solicitous that no means by which so desirable an object might be facilitated should be left untried, he consulted alike his inclination and his duty, by making the proposal in question. If His Majesty's Government are so firm in the belief that a satisfactory settlement of the disputed line of boundary according to the Treaty of 1783, is so clearly impracticable as to render all future efforts to that end unavailing, and had, on that account, declined the offer made by the President, he might not have had cause to complain. But it appeared to him to be exceedingly unreasonable that he should be asked to adopt, in the prosecution of a proposed plan for the ascertainment of the true boundary as prescribed by the Treaty, those suggestions and opinions of the arbiter by which alone he had brought his mind to the extraordinary conclusion that the boundaries prescribed could not be located; more especially so when the President sincerely dissented from the correctness of those opinions, and when in addition thereto the admission of some of them might, as understood by and following the previous pretensions of His Majesty's Government, establish, as the true boundary of the Treaty of 1783, the line claimed by Great Britain, yet declared by the arbiter himself, the adoption of whose opinions was thus asked, to be towards the United States, unjust and inequitable, and not comporting with the obligations and intentions of the parties to that instrument. Sir Chas. R. Vaughan was informed by Mr. McLane, of the reasons upon which this opinion of the President was founded, and His Majesty's Government invoked, not to persist in requiring conditions, to which the President could not assent.

The President is pleased to find, that the frank and conciliatory spirit, in which this was done, has been duly appreciated by His Majesty's Government, and sincerely regrets, that they were not also found to possess sufficient force and justice to induce it to withdraw entirely the objectionable conditions. Such he is concerned to find, has not been the case; but that, on the contrary, while it has pleased His Majesty's Government to waive, for the present, six of the seven opinions referred to, the remaining one, among the most important of them all, is still insisted upon. The President does not think it necessary to direct any thing to be added to the reasons, which have been urged by Mr. McLane, in support of the objections of a general character to the course which His Majesty's Government think it justifiable to pursue in this respect, and the Undersigned, therefore, only requests a careful reconsideration of them. In respect to the specific condition, still insisted upon, viz., that the St. John and Restigouche should be treated by the proposed commission as not being Atlantic rivers, according to the meaning of those terms in the Treaty, the Undersigned submits a few brief remarks. Whether these rivers were or were not to be so regarded, was a point most laboriously argued between the two Governments, but without success, as far as it respected the opinions of either. Sir Chas. R. Vaughan, in his communication, to which this is a reply, has reasserted some of the positions of fact, and reinforced some of the reasons then asserted and urged by his Government; but the Undersigned is not apprized of any thing new, either of fact or argument, that has now, for the first time, been brought forward. The inutility of renewing the discussion on this point is so obvious, that the Undersigned deems it necessary merely to suggest, that, however convincing and satisfactory the argument of the British Government to itself, it has been ever considered by the United States as altogether inconclusive; and the contrary position as most fully sustained by the arguments and facts heretofore adduced on their part in the discussion between the two Governments of the subject. That part of the communication of Sir C. R. Vaughan, however, which seeks to strengthen the ground heretofore taken on this point by his Government, by calling to its aid the supposed confirmation by the arbiter, requires a more particular notice. In Sir C. R. Vaughan's note, of the 10th February, 1834, the arbiter is represented, to have declared "that rivers falling into the Bay of Chaleurs and the Bay of Fundy, cannot be considered, according to the meaning of the Treaty, as rivers falling into the Atlantic; and especially that the rivers St. John and Restigouche cannot be looked upon as answering the latter description;" and in Sir Charles R. Vaughan's last communication, the fact of such an opinion having been declared, is taken for granted. Without stopping to question the effect of such a declaration upon the rights of the parties, as it has been rendered unnecessary by what has heretofore been said, the Undersigned feels himself fully warranted in questioning that any such opinion has been given by the respected arbiter.

In regard to the first and most material point in controversy,—where is the spot designated in the Treaty as the north-west angle of Nova Scotia, and where the highlands dividing the rivers that empty themselves into the river St. Lawrence, from those falling into the Atlantic Ocean, along which highlands is to be drawn the line of boundary from that angle to the north-westernmost head of the Connecticut river?—the arbiter considered "that the nature of the difference, and the vague and not sufficiently determinate stipulations of the Treaty of 1783, do not permit to adjudge either of the lines to one of the said parties" without wounding the principles of law and equity, with regard to the other." It is indeed true, that in support of this view of the subject it was observed by the arbitrator, "that if in contradistinction to the rivers that empty themselves into the St. Lawrence it had been proper, agreeably to the language ordinarily used in geography, to comprehend the rivers falling into the bays of Fundy and Des Chaleurs, with those emptying themselves directly into the Atlantic Ocean, in the general denomination of rivers falling into the Atlantic Ocean, it would be hazardous to include into the species belonging to that class, the rivers St. John and Restigouche, which the line claimed at the north of the river St. John, divides immediately from rivers emptying themselves into the river St. Lawrence, not with other rivers falling into the Atlantic Ocean, but alone; and thus to apply in interpreting the delineation established by the Treaty, where each word must have a meaning to two exclusively special cases, and where no mention is made of the genus (*genre*), a general expression which would ascribe to them a broader meaning," &c.

It cannot but appear, upon further reflection to Sir Charles R. Vaughan, that this declaration that the rivers St. John and Restigouche could not be *alone* taken into view without hazard in determining the disputed boundary, is not the expression of an opinion that they should be altogether excluded in determining that question, or in other words, that the opinion of the Arbitrator is, that the St. John and Restigouche cannot be looked upon as rivers emptying into the Atlantic.

The Undersigned has examined the award in vain to discover any other declaration of the Arbitrator, from which support could be derived for the assumption under consideration, and he finds nothing to sustain it in the general conclusions, which the Arbitrator has allowed himself to reach. On the contrary, he insists that, independently of the strong inference to be drawn from the whole tenor of the Award, that it was not his intention to express the opinion imputed to him. The Arbitrator has in terms protected himself, as well as the United States against such an assumption by the following explicit declaration, almost immediately succeeding that which can only be relied on to support the opposite conclusion: "*And on the other hand*, that it cannot be sufficiently explained how, if the high contracting parties intended in 1783 to establish the boundary at the south of the river St. John, that river to which the territory in dispute is, in a great measure, indebted for its distinctive character, has been neutralized and set aside."

Entertaining these views, the President has made it the duty of the Undersigned to apprise Sir C. R. Vaughan, that he cannot agree to clog the submission with the condition proposed by His Majesty's Government. A thorough and most careful re-examination of the subject, in all its relations, has but served to confirm his previous impressions, that a just regard for the rights of the parties, and a proper consideration of his own duty, require that the new submission, if made, should be made without restriction or qualification upon the discretion of the commissioners, other than such as result from established facts, and the just interpretation of the Treaty of 1783, and such as have been heretofore, and are hereby now again tendered by him to His Britannic Majesty's Government. He despairs of obtaining a better constituted tribunal than the one proposed. He sees nothing unfit or improper in submitting the question as to the character in which the St. John and Restigouche are to be regarded, to the decision of impartial commissioners. The parties have heretofore thought it proper so to submit it, and it by no means follows, that because commissioners chosen by the parties themselves without an umpire, have not been able to come to an agreement in respect to it, that the same unfortunate result would attend efforts of commissioners differently selected.

The President is not, at present, advised of any other proposition that it is in his power to make, in furtherance of that object, which is alone within his constitutional competency, the settlement of the boundary, according to the Treaty of 1783. The Undersigned is, however, instructed to say, that he will be most happy to receive such proposition as His Britannic Majesty's Government may think it expedient to make, and will not fail to consider it in a just and conciliatory spirit. He has also been authorized by the President to confer with Sir Charles R. Vaughan, whenever it may suit his convenience, and comport with the instructions of his Government, as well in respect to any suggestion which he may have to make upon the subject of the Treaty Boundary, as to any proposition His Majesty's Government may be disposed to offer for a conventional substitute for it. The Undersigned deems it, however, required by frankness, to say to Sir Charles R. Vaughan, that as the President does not possess the power to establish a conventional boundary without the consent of the State of Maine, it will be greatly conducive to the preservation of that harmony between the two countries, both are so desirous to cherish, and which is so liable to be impaired by unavailing negotiation, that whatever proposition His Majesty's Government may feel disposed to make, should, before its submission to the authorities of that State, receive a form sufficiently definite to enable the President to take their sense upon it without embarrassment, and with the least possible delay.

The Undersigned avails himself, &c.

Rt. Hon. Sir C. R. Vaughan,
 &c. &c. &c.

(Signed) JOHN FORSYTH.

Inclosure 2 in No. 45.

*Sir C. R. Vaughan to the Hon. John Forsyth.**Washington, May 4, 1835.*

THE Undersigned, His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, has the honor to acknowledge the receipt of the note of the Secretary of State of the United States, in answer to the observations which he presented, according to the instructions from His Majesty's Government, respecting the proposal of the President of the United States, to endeavour to settle the boundary by establishing a new commission of survey.

It is with great regret that the Undersigned finds, that a condition which His Majesty's Government stated to be an essential preliminary, to the adoption of the proposal of the President, is declared to be inadmissible by the Government of the United States.

The Secretary of State, in his note, not only questions, but positively denies, that the view taken by His Majesty's Government of that point in the dispute, which respects the rivers which are to be considered as falling directly into the Atlantic, has received any confirmation, as alleged in the note of the Undersigned, from the terms of the award of the arbiter.

Without attempting to give a clear exposition of the meaning of that passage in the award, where it is stated, that it would be hazardous to comprehend the rivers Restigouche and St. John, in those which fall directly into the Atlantic Ocean; the very passage cited by Mr. Forsyth, in his note, forms a part of the reasoning of the arbiter, founded on the words of the Treaty, against admitting the American Line, north of the St. John, because that river and the Restigouche, which that north line separates from rivers, emptying themselves into the St. Lawrence, are not to be considered as the rivers of the Treaty which fall into the Atlantic Ocean.

The Undersigned therefore appeals, with confidence to the tenor of the language of the award, to justify the inference which has been drawn from it by His Majesty's Government.

The acquiescence of the Government of the United States, in that which was understood to be the opinion of the arbiter, was invited by His Majesty's Government, because the new commission could not enter upon their survey of the disputed Territory in search of highlands to be distinguished by the separation of rivers, without a previous agreement between the respective Governments, what rivers ought to be considered as rivers falling into the Atlantic.

Mr. Forsyth observes, that the new submission should be left to the discretion of the commissioners without restriction, but it appears to the Undersigned, that if the character in which the rivers Restigouche and St. John are to be regarded, is a question to be submitted to them, the proposal of the President would assume the character of a renewed arbitration, which, as Mr. Forsyth observes, "promises too little to attract the favourable consideration of either party."

While His Majesty's Government has been disposed to maintain the validity of the decisions of the arbiter on subordinate points, their mention has not been confined exclusively to those decided in favour of British claims. An attentive consideration of the whole of the decisions in the award will shew that they are nearly balanced in favour of either party, while the general result of the arbitration to which His Majesty's Government expressed a willingness to adhere, was so manifestly in favour of the United States, that to them were assigned three-fifths of the territory in dispute, and Rouse's Point, in Lake Champlain, to which the American Government had voluntarily resigned all claim.

The Undersigned begs leave to offer some explanation of the suggestion which he ventured to make without instructions from his Government, which is alluded in the note of the Secretary of State.

In a note addressed to Mr. McLane, and dated the 31st May, 1833, the Undersigned being convinced of the insuperable difficulties, in the way of tracing the line of the Treaty, notwithstanding the proposal of the President to deviate from the due north line from the St. Croix river in search of the highlands, ventured to observe, that the question of boundary could only be set at rest by the abandonment of the defective description of it in the Treaty, and by the Governments mutually agreeing upon a conventional line more convenient

to both parties than either of the lines insisted upon by the commissioners under the Treaty of Ghent, or the line recommended by the King of the Netherlands. The answer to that suggestion, in a note dated the 5th of June, 1833, from Mr. McLane was, that it would rather add to than obviate the constitutional difficulties already insuperable.

The Undersigned acknowledges, with great satisfaction, the assurance which he has now received, that if the President possessed the same full power as His Majesty's Government over the question of boundary, so long in discussion, he would have met the suggestion in as favourable a spirit as that by which it was prompted. His Majesty's Government must acknowledge, and will duly appreciate the friendly spirit and the unwearied endeavours of the President to remove the only difficulty which remains in the relations with the United States; and it is to be lamented, that the two Governments cannot coincide in the opinion, that the object is attainable by the proposal of the President, as it is all that it is in his power to offer, in alleviation of the hopeless task of tracing the line of the Treaty, to which the Senate has advised, that any future negotiation with the British Government for settling the boundary, should be restricted.

The Undersigned will transmit without delay to His Majesty's Government a copy of the note, which he has received from the Secretary of State of the United States, and he is ready to meet the wishes of the President, and to confer with the Secretary of State, whenever it may be convenient to receive him.

As to any proposition, which it may be the wish of the Government of the United States to receive from His Majesty's Government respecting a conventional substitute for the line of the Treaty of 1783, the constant allusion in the correspondence, which has taken place to constitutional difficulties in the way of the executive treating for any other line, than one conformable with that of the Treaty, until the consent of the State of Maine is obtained, seems to point out the necessity, in the first instance, of attaining that object, which must be undertaken exclusively by the General Government of the United States. As to the other difficulties which present themselves to the Undersigned, they will more properly form the subject of a conference with the Secretary of State.

The Undersigned &c.

The Hon. John Forsyth.
Sc. Sc. Sc.

(Signed) CHAS. R. VAUGHAN.

No. 46.

Viscount Palmerston to Charles Bankhead, Esq.

Sir, *Foreign Office, October 30, 1835.*

HIS Majesty's Government have taken into their most deliberate consideration the note presented by Mr. Forsyth to Sir Charles Vaughan on the 28th April last, upon the boundary question, and I have now to give you instructions for a reply to the Government of the United States.

His Majesty's Government have observed with the greatest pleasure, during the whole of the communications which of late have taken place on this question, the friendly and conciliatory spirit which has been manifested by the President of the United States; and they are themselves equally animated by the sincerest desire to settle this matter by an arrangement just and honorable for both parties.

His Majesty's Government are fully convinced that if the repeated attempts which they have made to come to an understanding on this subject with the Government of the United States, have not been attended with success, the failure of their endeavours has been owing to no want of a corresponding disposition on the part of the President, but has arisen from difficulties on his side, over which he has had no control.

His Majesty's Government, however, do not the less lament that the advances which they have made have been fruitless; but with their regret is mingled the satisfactory consciousness which they feel, that in making those advances, they have gone to the utmost extent to which a due regard for the honour and interests of the British Crown could permit them to go.

The time seems, however, now to be arrived, when it has become expedient to take a review of the position in which the discussion between the two Govern-

ments stands ; and by separating those plans of arrangement which have failed, from those which are yet susceptible of being adopted, to disencumber our future communications of all useless matter, and to confine them to such suggestions only as may by possibility lead to a practical result.

And first with regard to the award of the King of the Netherlands, the two Governments had agreed to refer to that Sovereign as arbiter, the decision of the Three Points of difference ; and they pledged themselves before hand to abide by the decision which he might pronounce.

The King of the Netherlands decided absolutely two points out of the three ; and with respect to the third, while he declared that an absolute decision of that point was impossible, he recommended to the two parties a compromise.

His Majesty's Government on receiving the award of the King of the Netherlands, announced, without any hesitation, their willingness to abide by that award, if it should be equally accepted by the United States.

His Majesty's Government were of course fully aware that this award was not an absolute decision on all the three points submitted to reference ; they were also quite sensible that in some important matters this award was less favourable to Great Britain than it was to the United States ; but the wish of His Majesty's Government for a prompt and amicable settlement of this question, outweighed the objections to which the award was liable, and for the sake of obtaining such a settlement, they determined to accept the award.

But their expectations were not realized. The Senate of the United States refused in July 1832 to subscribe to the award ; and during the three years which have elapsed since that time, although the British Government has more than once declared that it was still ready to abide by its offer to accept the award, the Government of the United States has as often replied that on its part that award could not be agreed to.

The British Government must now in its turn declare that it considers itself by this refusal of the United States, fully and entirely released from the conditional offer which it had made, and you are instructed distinctly to announce to the President, that the British Government withdraws its consent to accept the territorial compromise recommended by the King of the Netherlands.

The award being thus disposed of, the next matter to be considered is, the proposal of the President of the United States, that a new survey of the disputed territory should be made by commissioners, to be named in one of two ways suggested by him, and that these commissioners should endeavour, by exploring the country, to trace a boundary line that should be conformable with the Treaty of 1783.

With this view the President suggests that, whereas the landmark to be looked for consists of certain highlands described in the Treaty, the commissioners should be authorized to search for those highlands in a north westerly direction from the head of the St. Croix river, if no such highlands should be found in the due north line from that point.

To this His Majesty's Government replied, that before an exploring commission could be sent out in search of these highlands, it would be necessary that the two Governments, and by consequence their respective commissioners, should be agreed as to the definition by which any given hills were to be identified as being the highlands intended by the Treaty. That, according to the words of the Treaty these highlands were to be known by the circumstance of their dividing rivers flowing into the St. Lawrence from rivers flowing into the Atlantic ; that with regard to rivers flowing into the St. Lawrence, no doubt could possibly exist as to which those rivers were ; but that with regard to rivers falling into the Atlantic Ocean, a question has been mooted as to them, and this question is, whether the bay of Fundy should, for the purposes of the Treaty, be considered as part of the Atlantic, and whether rivers flowing into that bay should be deemed to be Atlantic rivers.

His Majesty's Government stated the reasons which in their opinion render it clear and certain that the Treaty of 1783 establishes a distinction between the Bay of Fundy and the Atlantic Ocean, and therefore excludes from the class of Atlantic rivers, rivers which discharge themselves into that bay.

His Majesty's Government farther quoted in confirmation of this their opinion, the decision which, as they contend, the King of the Netherlands

incidentally gave upon this question in the course of his award; and they expressed their hope that the Government of the United States would be prepared to agree with them and with the King of the Netherlands on this particular point.

It appears, however, by Mr. Forsyth's note of the 28th April, that this hope has been disappointed, and that the President finds himself unable to admit the distinction drawn in this respect between the Bay of Fundy and the Atlantic Ocean.

Under these circumstances, His Majesty's Government cannot see how any useful result could arise out of the proposed survey; and it appears to them, on the contrary, that if such survey did not furnish fresh subjects of difference between the two Governments, it could at best only bring the question back to the same point at which it now stands.

For it is to be presumed that the commissioners would begin by exploring the due north line mentioned in the Treaty, and it is obvious that in pursuing that line they could not, until they had crossed over to the northward of the river St. John, find any highlands from which rivers flow into the St. Lawrence, while it is equally clear that after they had crossed over to the northward of the river St. John, they could find no highlands from which any rivers flow into the Atlantic according to the strict interpretation of the Treaty.

But they might find, northward of the St. John, highlands separating rivers which flow into the St. Lawrence, from rivers which flow into the bay of Fundy; and, in that case, what would the Commissioners have to do? The American commissioners would say, they had found the highlands of the Treaty; the British commissioners would declare that those were not the highlands which the Treaty describes.

Would the commissioners then come back to their respective Governments for that decision on the River Question, which ought to have been made before they set out? or, failing to come to an agreement amongst themselves, while pursuing the due north line, would they at once, and without further reference to their Governments, endeavour to find to the westward of that line some other highlands, which the two Governments might agree to accept as separating rivers which flow into the St. Lawrence, from rivers, which, by the consent of both parties, flow into the Atlantic Ocean?

His Majesty's Government have not yet understood that this latter course of proceeding is intended by the President; but if his proposal is to be so interpreted, much of the difficulty attending its execution would undoubtedly be removed.

The President, however, has suggested another way of getting over the embarrassment of the river question; and to this plan His Majesty's Government regret that it is not in their power to assent. The President suggests, that the commission of survey should be empowered to decide this point of difference. But His Majesty's Government cannot admit that this point could properly be referred to such a commission. The river question is one which turns upon no local survey, and for the decision of which no farther geographical or topographical information can be required. It turns upon the interpretation to be put upon the words of the Treaty of 1783, and upon the application of that interpretation to geographical facts, already well known and ascertained. A Commission of survey therefore has no peculiar competency to decide such a question. But to refer that question to any authority would be to submit it to a fresh arbitration; and if His Majesty's Government were prepared to agree to a fresh arbitration, which is by no means the case, such arbitration ought necessarily to include all the points in dispute between the two Governments, and not to be confined to one particular point alone.

With respect then to the President's proposal for a commission of exploration and survey, His Majesty's Government could only agree to such a commission provided there were a previous understanding between the two Governments; that although neither should be required to give up its own interpretation of the river question, yet as the commission of survey would be intended for purposes of conciliation, and with a view of putting an end to discussions on controverted points, the Commissioners should be instructed to search for highlands, upon the character of which no doubt could exist on either side.

But if this modification of the President's proposal should not prove ac-

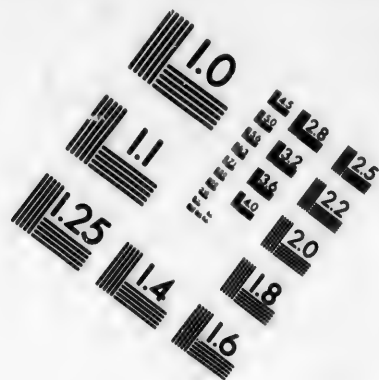
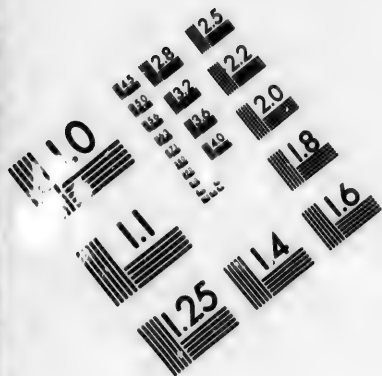
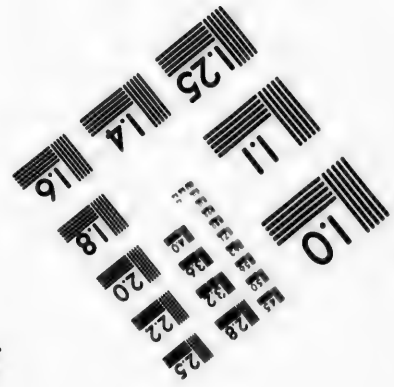
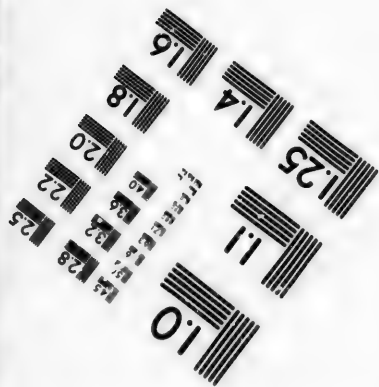
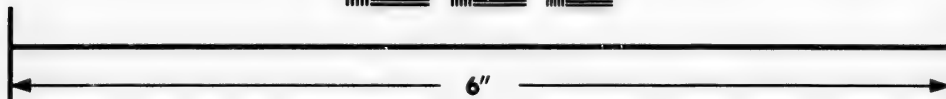
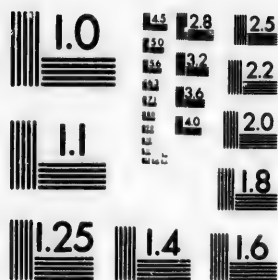


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ceptable to the Government of the United States, the only remaining way of arriving at an adjustment of the difference would be to abandon altogether the attempt to draw a line in conformity with the words of the Treaty of 1783; and to fix upon a conventional line, to be drawn according to equitable principles and with a view to the respective interests and convenience of the two parties.

His Majesty's Government are perfectly ready to treat for such a line, and they conceive that the natural features of the disputed territory would afford peculiar facilities for drawing it.

When a tract of country is claimed by each of two States, and when each party is equally convinced of the justice of its own claim to the whole of the district in question, the fairest way of settling the controversy would seem to be to divide in equal portions between the two claimants the territory in dispute.

Such a mode of arrangement appears to be consistent with the natural principles of equity.

His Majesty's Government would therefore propose to that of the United States, to adjust the present difference, by dividing equally between Great Britain and the United States the territory in dispute; allotting to each party that portion which, from contiguity or other circumstances, would be most desirable as a possession for each.

The general outline of such a division would be, that the boundary between the two states should be drawn as required by the Treaty, due north, from the head of the St. Croix river, and should be carried straight on till it intersected the St. John; from thence it should run up the St. John, to the southernmost source of that river; and from that point it should be drawn to the head of the Connecticut river, in such manner as to make the northern and southern allotments of the divided territory as nearly as possible equal to each other in extent; the northern allotment to remain with Great Britain, the southern allotment to belong to the United States.

You are therefore instructed to present to Mr. Forsyth a note, of which I enclose you a copy,* for the purpose of enabling him to bring distinctly before the Government of the United States, the propositions now made by His Majesty's Government.

I am, &c.

(Signed)

PALMERSTON.

Charles Bankhead, Esq.
&c. &c. &c.

No. 47.

Charles Bankhead, Esq. to Viscount Palmerston.—(Received January 13, 1836.)
My Lord, Washington, December 8, 1835.

I HAVE the honor to transmit to your Lordship a copy of the message communicated by the President of the United States, this day, to both Houses of Congress.

I have the honor to be, &c.

(Signed)

CHARLES BANKHEAD.

Viscount Palmerston, G. C. B.
&c. &c. &c.

Inclosure in No. 47.

Extract of Message from the President of the United States to Congress.

IN the settlement of the question of the north-eastern boundary little progress has been made. Great Britain declined acceding to the proposition of the United States, presented in accordance with the resolution of the Senate, unless certain preliminary conditions were admitted, which I deemed incompatible with a satisfactory and rightful adjustment of the controversy. Waiting

* The note being (*mutatis mutandis*) in the words of this despatch, it is not thought necessary to print it in this place.

for some distinct proposal from the Government of Great Britain, which has been invited, I can only repeat the expression of my confidence that with the strong mutual disposition which I believe exists, to make a just arrangement, this perplexing question can be settled with a due regard to the well founded pretensions and pacific policy of all the parties to it. Events are frequently occurring on the north-eastern frontier, of a character to impress upon all the necessity of a speedy and definitive termination of the dispute. This consideration, added to the desire, common to both, to relieve the liberal and friendly relations so happily existing between the two countries, from all embarrassment, will no doubt have its just influence upon both.

7th December, 1835.

No. 48

Charles Bankhead, Esq. to Viscount Palmerston.—(Received January 25, 1836.)
(Extract) *Washington, December 29, 1835.*

I HAD the honor to receive on the 27th instant, your Lordship's despatch of the 30th October, inclosing a note, which you have instructed me to present to the Secretary of State, containing the views of His Majesty's Government upon the question of a north-east boundary, between the province of New Brunswick and the United States.

I lost no time in submitting this paper to Mr. Forsyth, and I accompanied its presentation with the expression of a strong hope, that the liberal and reasonable propositions which it contained would be viewed by the President as an earnest of the friendly feelings manifested by His Majesty, to settle this important question, upon a basis of reciprocal advantage; and I added that we looked forward with confidence to a corresponding sentiment on the part of the American Government. Mr. Forsyth declined to make any observations upon the contents of my note, farther than to express his decided opinion, that the proposal made by your Lordship for a conventional line of boundary, could never be adopted, inasmuch as the State of Maine would not agree to accept a smaller portion of the territory than that given to her by the King of the Netherlands, whose award she thought fit to refuse.

With respect to the other proposal mentioned by your Lordship, Mr. Forsyth stated to me, that he should enter into the discussion of it with the President, without loss of time, and with every wish, if possible, to avail himself of its object.

No. 49.

Charles Bankhead, Esq. to Viscount Palmerston.—(Received March 29.)

My Lord,

Washington, March 5, 1836.

I HAVE the honour to transmit to your Lordship, the copy of a note, which I received on the second instant, from the Secretary of State of the United States, in answer to the one, addressed by me to this Government on the 28th December last, on the question of the north-east boundary between His Majesty's north American provinces and the United States.

Your Lordship will observe that Mr. Forsyth endeavours to combat the construction put upon that part of the subject, called "the River Question;" he adheres to the opinion already advanced by the Government of the United States upon that point of difference; and he quotes the public Acts of Great Britain, in defining the boundary between Canada and Nova Scotia, as establishing the American position of the north-west angle of the latter province.

This is ground, however, which has frequently been disputed; and I do not perceive that Mr. Forsyth has brought any new feature forward, in attempting to refute your Lordship's clear interpretation of "the River Question."

The conventional line, proposed by His Majesty's Government, is pronounced

to be such, as the State of Maine would never consent to adopt, inasmuch as it gives to that State, a far less accession of territory, than the King of the Netherlands awarded to her, and which she refused.

The offer is again put forward to make the river St. John the boundary between the two countries, although I have repeatedly stated the impossibility, on the part of the British Government, of agreeing to such a proposition.

The recent proceedings in that portion of the territory in dispute, called the Indian Stream settlement, have induced the President to propose an immediate arrangement of that part of the boundary, leaving to ulterior negotiation, the other points of difference.

In a conversation with Mr. Forsyth upon the contents of his note, I mentioned to him, that he did not sufficiently weigh that part of my communication of December last, in which a modification of the President's proposition was conditionally acceded to by the British Government.

I ought here to state to your Lordship, that on presenting my note in December last to Mr. Forsyth, he objected to the modified proposal of His Majesty's Government, as precluding the possibility of the question being terminated during the Presidency of General Jackson, as he knew the President was most anxious to retire from his present situation, after having settled every point of difference existing between the United States and foreign Powers, and especially the question of boundary with Great Britain. On my calling his attention again to this point, he said that he had taken your Lordship's modified proposition to be nothing more than a civil way of getting rid of the question of commission altogether. I immediately referred him to that part of my note, and after reading it over attentively, he said, that if my Government really wished for the formation of a commission of exploration and survey, whose labours were to be afterwards submitted to their respective Governments, and whose decisions or opinions were not to be final, he thought that the President, would have no objection in acceding to such a proposal. He asked me of what materials the commission to be appointed, were likely to be composed, and whether the composition of either of the two, named by the President, was intended to be taken. I told him that I had no definite instructions upon that point; but I presumed that some agreement or convention would be necessary, before the commissioners were named, in order to regulate the course of proceeding, and to provide for, and give effect to its results.

I have the honour to transmit to your Lordship the copy of a note, which I thought it my duty to present to the Secretary of State, founded upon the above view of the preliminary measure proposed by your Lordship.

I have the honour to be, &c.

Viscount Palmerston, G.C.B.

(Signed)

CHARLES BANKHEAD.

&c. &c. &c.

P.S.—I have this instant received Mr. Forsyth's answer to my last note, and I beg leave to transmit a copy of it to your Lordship.

C. B.

Inclosure No. 1 in No. 49.

The Hon. John Forsyth to Charles Bankhead, Esq.

Department of State, Washington, February 29, 1836.

THE Undersigned, Secretary of State of the United States, has been instructed to reply to the note of Mr. Bankhead of the 28th December last, on the subject of the north-eastern boundary of the United States. The President sees, with great satisfaction, the continued assurances of the British Government of its earnest desire speedily and justly to settle the matter in controversy by an arrangement honorable to both parties, and believes that his own conciliatory disposition will be best manifested by a direct attention to the points now presented by His Britannic Majesty's Government, with a view to some definite understanding on the subject.

The award of the arbiter having been now abandoned by both parties to the arbitration, the whole subject is open as if there never had been a submission of it.

The President perceives in Mr. Bankhead's note no allusion to any portion

of the line, except that beginning at the source of the St. Croix, and terminating at the head of the Connecticut River. Supposing this omission to bring into view the residue of the boundary line between the United States, and the dominions of His Britannic Majesty, has been the result of a conviction that the parties so far understood each other, as to be satisfied that on that part of the subject a settlement could be made without difficulty or delay, whenever it was important to them to make it, the President has instructed the Undersigned to confine himself to the points touched by Mr. Bankhead's note with this single suggestion—that events of a very grave character have lately occurred, which impress upon his mind a conviction that an establishment of that part of the line as to which the parties are nearly of accord, had better be made at once, unless the efforts now making should promise an immediate adjustment of the whole controversy.

The President finds, with great regret, that His Britannic Majesty's Government adheres to its objection to the appointment of a commission to be chosen in either of the modes proposed in former communications on the part of the United States. This regret is heightened by the conviction that the proposition upon which it is founded, "that the river question," as it is called, "is a question of construction only," although repeated on various occasions by Great Britain, is demonstrably untenable. Indeed, it is plausible only, when material and most important words of description in the Treaty are omitted in quoting from that instrument. The Treaty marks the two determining points of the line in dispute—the source of the St. Croix and the north-west angle of Nova Scotia. Is it a question of Treaty construction only where the north-west angle of Nova Scotia is? A survey of Nova Scotia, as known at the date of the Treaty of Peace, necessarily establishes that point. Where is it to be found according to the public acts of Great Britain? Is it to be found on a line beginning on the westernmost bend of the Bay des Chaleurs, and thence passing along the highlands dividing the waters falling into the St. Lawrence, from the waters falling into the sea? Can His Majesty's Government expect the Government of the United States to consent before the selection of a commission of examination and survey, and the appointment of an umpire to decide on the contingency of their disagreement, that the terminating point of the line running due north from the source of the St. Croix, is to be alone looked for on highlands, which cannot be reached from the westernmost bend of the Bay des Chaleurs, but by running directly across high mountains, deep valleys, and the large rivers that flow through them? Agreement between the United States and Great Britain on this point is impossible, while His Majesty's Government continues to maintain this position. The President, therefore, as at present informed, is under the necessity of looking to the new and conventional line offered in Mr. Bankhead's note. That equity in disputes about territory, when both parties are satisfied of the justice of their respective pretensions, requires a fair division of the disputed property, is a truth the President freely admits; but the Undersigned is instructed to remind Mr. Bankhead of what has been heretofore stated, that in a conventional line the wishes and interests of the State of Maine were to be consulted, and that the President cannot, in justice to himself, or to that State, make any proposition utterly irreconcilable with her previously well known opinions on the subject. His Majesty's Government will not have forgotten, that the principle of compromise and equitable division, was adopted by the King of the Netherlands, in the line recommended by him to the parties, a line rejected by the United States, because unjust to Maine; and yet the line proposed by the King of the Netherlands, gave to Great Britain little more than two millions, while the proposition now made by His Britannic Majesty's Government secures to Great Britain, of the disputed land, more than four millions of acres.

The division offered by Mr. Bankhead's note is not in harmony with the equitable rule from which it is said to spring; and if it were in conformity with it, could not be accepted without disrespect to the previous decisions and just expectations of Maine. The President is far from supposing this proposition is founded upon a desire of His Majesty's Government to acquire territory, or that the quantity of land secured to Great Britain, in the proposed compromise, was the leading motive to the offer made. His Majesty's Government have no doubt made the offer without regard to the extent of the territory falling to the north or south of the St. John, from a belief that a change in the character of the

boundary line, substituting a river for a highland boundary, would be useful in preventing territorial disputes in future. Coinciding in this view of the subject, the President is nevertheless compelled to decline the boundary proposed, as inconsistent with the known wishes, rights and decisions of the State. With a view however, to terminate at once all controversy, and satisfactorily, without regard to the extent of territory lost by one party or acquired by the other, to establish an unchangeable and definite and indisputable boundary, the President will, if His Majesty's Government consent to it, apply to the State of Maine for its assent to make the river St. John from its source to its mouth, the boundary between Maine and His Britannic Majesty's dominions in that part of North America.

The Undersigned avails himself, &c.

(Signed) JOHN FORSYTH.

*Charles Bankhead, Esq.
&c. &c. &c.*

Inclosure 2 in No. 49.

Charles Bankhead, Esq. to the Hon. John Forsyth.

Washington, March 4, 1836.

THE Undersigned, &c., has the honour to acknowledge the receipt of the note, which Mr. Forsyth, &c., addressed to him on the 29th ultimo, upon the subject of the north-east boundary between His Majesty's North American possessions and the United States.

The rejection on the part of the President of the conventional line, which the Undersigned had the honor to propose in his note of the 28th December, cannot but cause great regret to His Majesty's Government, inasmuch as it was proposed with a view to settle this protracted question of boundary, and as offering as fair and equal a division of the territory, as they could possibly be required to subscribe to.

The Undersigned, however, thinks it right to refer Mr. Forsyth to that part of his note of the 28th December, wherein the proposition of the President for a commission of exploration and survey is fully discussed. It is there stated that His Majesty's Government could only agree to such a commission, provided there was a previous understanding between the two Governments that, although neither should be required to give up its own interpretation of "the river question," yet as the commission of survey would be intended for purposes of conciliation, and with a view of putting an end to discussions on controverted points, the commissioners should be instructed to search for highlands upon the character of which no doubt could exist on either side.

It appears to the Undersigned, that the Secretary of State in his answer of the 29th ultimo, has not given this modification on the part of His Majesty's Government of the President's proposition, the full weight to which it was entitled. Indeed, it was offered with a view of meeting as far as practicable, the wishes of the President, and of endeavouring by such a preliminary measure, to bring about a settlement of the boundary, upon a basis satisfactory to both parties.

With this view, the Undersigned has the honour again to submit to the Secretary of State, the modified proposal of His Majesty's Government, bearing in mind that the commissioners who may be appointed, are not to decide upon points of difference, but are merely to present to the respective Governments the result of their labours, which it is hoped and believed will pave the way for an ultimate settlement of the question.

The Undersigned considers it due to the conciliatory manner in which the President has acted throughout this discussion, to state frankly and clearly, that the proposition offered in Mr. Forsyth's note, to make the river St. John, from its source to its mouth, the boundary between the United States and His Majesty's province of New Brunswick, is one to which he is convinced His Majesty's Government will never agree; and he abstained in his note of the 28th December, from any allusion to it, as the best proof he could give of its utter inadmissibility.

The Undersigned has the honour, &c.

*The Hon. John Forsyth.
&c. &c. &c.*

(Signed) CHARLES BANKHEAD.

Inclosure 3 in No. 49.

The Hon. John Forsyth to Charles Bankhead, Esq.

Department of State, Washington, March 5, 1836.

THE Undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Bankhead, &c., dated the 4th instant, in answer to that addressed to him by the Undersigned on the 29th ultimo, upon the subject of the north-eastern boundary, between the United States and His Majesty's possessions in North America.

Mr. Bankhead's communication having been submitted to the consideration of the President, the Undersigned is instructed to express the regret which is felt, that his proposition to make the river St. John the boundary between the State of Maine and His Majesty's province of New Brunswick, the acceptance of which, it is believed would have removed a fruitful source of vexatious difficulties, will, in the opinion of Mr. Bankhead, be declined by His Majesty's Government. The Government of the United States cannot, however, relinquish the hope, that this proposal, when brought before His Majesty's Cabinet, and considered with the attention and deliberation due to its merits, as well as to the important nature of the question with which it is connected, will be viewed in a more favorable light than that in which it appears to have presented itself to Mr. Bankhead. If, however, this expectation should be disappointed, and the river boundary be rejected, it will be necessary, before the President consents to the modification of his previous proposition, for the appointment of a commission of exploration and survey, to be informed more fully of the views of the British Government in offering the modification, so that he may be enabled to judge how the report of the commission (which as now proposed to be constituted, is not to decide upon points of difference), when it shall have been rendered, is likely to lead to an ultimate settlement of the question of boundary between the two Governments.

The President also desires to be informed which of the modes proposed for the selection of commissioners is the one intended to be accepted, with the modification suggested by His Britannic Majesty's Government.

Whenever Mr. Bankhead is fully instructed on these points, the Undersigned is prepared, by the directions of the President, to make a definite reply, which will be dictated by a sincere desire on the part of the President, to adopt any proposition that promises a speedy and satisfactory termination of this long pending and perplexing controversy.

The Undersigned, &c.

(Signed) JOHN FORSYTH.

Charles Bankhead, Esq.,

Esq. &c. &c.

No. 50.

Henry S. Fox, Esq., to Viscount Palmerston.—(Received August 8.)

My Lord,

Washington, July 14, 1836.

THE Senate of the United States, upon the motion of Mr. Webster, the Senator from Massachusetts, passed a resolution on the 21st of May, requesting the President to communicate whatever correspondence had passed with Great Britain upon the question of the north-eastern boundary, from the period of the rejection of the award of the King of the Netherlands down to the present time.

The correspondence was accordingly communicated to the Senate on the 15th of June. The President stated, in a message accompanying the communication, that he had felt it his duty to refuse complying with a similar request on the part of the House of Representatives, at the last session of Congress, judging it inexpedient to publish the correspondence while the negotiation was pending; but that as the negotiation was undertaken under the special advice of the Senate, he deemed it improper to withhold from them the information required, submitting it to them to decide whether it would be expedient to publish the documents before the negotiation was closed.

Notwithstanding this clear indication by the President of his wishes upon the subject, and his opinion that the documents ought not, at the present moment, to be made public, the Senate passed a further resolution on the 23rd of June, upon the motion of Mr. Clay, Chairman of the Committee of Foreign Relations, ordering the publication of the correspondence.

I have the honor herewith to enclose a printed copy of this publication. The whole of the documents, however, which it contains, consisting of correspondence between the American Secretaries of State and His Majesty's Legation in this country, are, of course, in the possession of His Majesty's Government.

As it was the Senate, in its executive capacity, that decided upon rejecting the award of the arbitrator, the Government could not withhold from that body the information required, but Mr. Forsyth does not conceal from me that both the President and himself are greatly annoyed at this forced and premature publication, as they consider it, of a diplomatic correspondence; and Mr. Forsyth has seemed anxious to explain to me, for the satisfaction of your Lordship, the peculiar circumstances under which the publication has taken place. I must observe that I do not myself perceive in the documents which are published, any thing that is calculated to impede or embarrass the future conduct of the negotiation.

I have the honor to be, &c.

Viscount Palmerston, G.C.B.
&c. &c. &c.

(Signed)

H. S. FOX.

No. 51.

Henry S. Fox, Esq. to Viscount Palmerston.—(Received January 5, 1837.)

My Lord,

Washington, December 6, 1836.

I HAVE the honour to transmit to your Lordship a copy of the message of the President of the United States, which was communicated this day to both Houses of Congress.

I have the honour to be, &c.

Viscount Palmerston, G. C. B.
&c. &c. &c.

(Signed)

H. S. FOX.

Inclosure in No. 51.

Extract from the Message of the President of the United States to Congress.

BUT although the present state of our foreign affairs, standing without important change as they did when you separated in July last, is flattering in the extreme, I regret to say, that many questions of an interesting character, at issue with other powers, are yet unadjusted. Amongst the most prominent of these, is that of our north-eastern boundary. With an undiminished confidence in the sincere desire of His Britannic Majesty's Government to adjust that question, I am not yet in possession of the precise grounds upon which it proposes a satisfactory adjustment.

December 6, 1836.

No. 52.

Henry S. Fox, Esq. to Viscount Palmerston.—(Received April 24.)

(Extract)

Washington, March 29, 1837.

I LOSE no time in conveying to your Lordship's knowledge the enclosed official note, addressed to me by the United States' Secretary of State, Mr. Forsyth, upon several important subjects connected with the question of the boundary line between the United States and His Majesty's possessions in North America.

Your Lordship will perceive that Mr. Forsyth's note concludes with strongly urging the wishes of the President's Government for an early settlement of the

important question of the boundary line, recurring to the proposals transmitted home to your Lordship through His Majesty's Chargé d'Affaires, Mr. Bankhead, in the early part of last year.

Inclosure in No. 52.

The Hon. John Forsyth to Henry S. Fox, Esq.

(Extract.)

Department of State, Washington, March 23, 1837.

THE proceedings above alluded * to considered, in connection with incidents on other parts of the boundary line, well known to His Majesty's Ministers, would seem to render it indispensable to the maintenance of those liberal and friendly relations between the two countries, which both Governments are so sincerely anxious to preserve, that they should come to a speedy adjustment on the subject. The recent resolutions of the State of Maine, to which the projected railroad from St. Andrews to Quebec gave rise, requesting the President of the United States to cause the line established by the Treaty of 1783 to be run, and monuments to be established thereon; and the appropriation of twenty thousand dollars by Congress at their late session to enable the executive to carry that request into effect, with a subsequent earnest application from the Representatives of Maine for an immediate compliance with it, afford additional incentives to exertion to bring this controversy to a conclusion, not to be disregarded by the President of the United States.

The President, therefore, awaits with great anxiety the decision of His Majesty's Government on the proposition made by the Undersigned to His Majesty's Chargé d'Affaires at Washington, in February 1836, suggesting the River St. John, from its mouth to its source, as an eligible and convenient line of boundary.

No small degree of disappointment has been felt, that this decision, already long expected, has not been given; but the hope is entertained, that the result of this protracted deliberation will prove favourable to the wishes of the President, and that, even if that proposition be not acceded to by His Britannic Majesty, some definitive offer, looking to a prompt termination of the controversy, will be made without further delay.

No. 53.

Viscount Palmerston to Henry S. Fox, Esq.

Sir,

Foreign Office, November 19, 1837.

VARIOUS circumstances have hitherto prevented Her Majesty's Government from giving you instructions with reference to the negotiation with the United States, upon the subject of the north-eastern boundary. Those instructions it is now my duty to convey to you.

I have accordingly to request that you will express to the Government of the United States the sincere regret of that of Great Britain, that the long continued endeavours of both parties to come to a settlement of this important matter, have hitherto been unavailing; but you will assure Mr. Forsyth that the British Government feel an undiminished desire to co-operate with the Cabinet of Washington for the attainment of this object of mutual interest; and that they have learned with great satisfaction that their sentiments on this point are fully shared by the existing President.

The communications which during the last few years have taken place upon this subject between the two Governments, if they have not led to a solution of the questions at issue, have at least narrowed the field of future discussion.

Both Governments have agreed to consider the award of the King of the Netherlands as binding upon neither party; and the two Governments therefore are as free in this respect as they were before the reference to that Sovereign was made.

* Relating to the projected railway through the disputed territory. See Class B.

The British Government despairing of the possibility of drawing a line that shall be in literal conformity with the words of the Treaty of 1783, has suggested that a conventional boundary should be substituted for the line described in the Treaty; and has proposed that, in accordance with the principles of equity, and in pursuance of the general practice of mankind in similar cases, the object of difference should be equally divided between the two differing parties, each of whom is alike convinced of the justice of its own claim.

The United States' Government has replied, that to such an arrangement it has no power to agree; that until the line of the Treaty shall have been otherwise determined, the State of Maine will continue to assume, that the line which it claims is the true line of 1783, and will assert, that all the land up to that line is territory of Maine; that consequently such a division of the disputed territory as is proposed by Great Britain, would be considered by Maine as tantamount to a cession of what that State regards as part of its own territory, and that the central Government has no power to agree to such an arrangement without the consent of the State concerned.

Her Majesty's Government exceedingly regret that such an obstacle should exist, to prevent that settlement, which, under all the circumstances of the case, appears to be the simplest, the readiest, the most satisfactory and the most just. Nor can Her Majesty's Government admit that the objection of the State of Maine is well founded. For the principle on which that objection rests is as good for Great Britain as it is for Maine. If Maine thinks itself entitled to contend, that until the true line described in the Treaty is determined, the boundary claimed by Maine must be regarded as the right one, Great Britain is surely still more intitled to insist upon a similar pretension; and to assert, that until the line of the Treaty shall be established to the satisfaction of both parties, the whole of the disputed territory ought to be considered as belonging to the British Crown, because Great Britain is the original possessor; and all the territory which has not been proved to have been by Treaty ceded by her, must be looked upon as belonging to her still. But the very existence of such conflicting pretensions seems to point out the expediency of a compromise; and what compromise can be more fair, than that, which would give to each party one half of the subject matter of dispute?

A conventional line different from that described in the Treaty, was agreed to, as stated by Mr. Forsyth in his note of 28th April, 1835, with respect to the boundary westward from the lake of the woods. Why should such a line not be agreed to likewise, for the boundary eastward from the river Connecticut?

Her Majesty's Government cannot refrain from again pressing this proposition upon the serious consideration of the Government of the United States, as the arrangement which would be the best calculated to effect a prompt and satisfactory settlement between the two Powers.

The Government of the United States, indeed, while it expressed a doubt of its being able to obtain the assent of Maine to the above-mentioned proposal, did nevertheless express its readiness to apply to the State of Maine for the assent of that State to the adoption of another conventional line, which should make the river St. John, from its source to its mouth, the boundary between the two countries. But it is difficult to understand upon what grounds any expectation could have been formed that such a proposal could be entertained by the British Government.

For such an arrangement would give to the United States even greater advantages than they would obtain by an unconditional acquiescence in their claim to the whole of the disputed territory; because such an arrangement would, in the first place, give to Maine all that part of the disputed territory which lies to the south of the St. John, and would, in the next place, in exchange for the remaining part of the disputed territory which lies to the north of the St. John, add to the State of Maine a large district of New Brunswick lying between the United States' boundary and the southern part of the course of the St. John; a district smaller indeed in extent, but much more considerable in value, than the portion of the disputed territory which lies to the north of the St. John.

But with respect to a conventional line, generally, the Government of Washington has stated, that it has not at present the powers constitutionally requisite, for treating for such a line, and has no hopes of obtaining such powers until the impossibility of establishing the line described by the Treaty shall have been

more completely demonstrated by the failure of another attempt to trace that line by a local survey.

Under these circumstances it appears that a conventional line cannot at present be agreed upon, and that such a mode of settlement is, in the existing state of the negotiation, impossible. Thus, then, the award of the King of the Netherlands has been abandoned by both parties in consequence of its rejection by the American Senate; and a negotiation between the two Governments for a conventional line suited to the interests and convenience of the two parties, has for the present been rendered impossible by difficulties arising on the part of the United States; and both Governments are alike averse to a new arbitration. In this state of things the Government of the United States has proposed to the British Cabinet, that another attempt should be made to trace out a boundary according to the letter of the Treaty, and that a commission of exploration and survey should be appointed for that purpose.

Her Majesty's Government have little expectation that such a commission could lead to any useful result, and on that account would be disposed to object to the measure. But at the same time they are so unwilling to reject the only plan now left, which seems to afford a chance of making any further advance in this long pending matter, that they would not withhold their consent to such a commission, if the principle upon which it was to be formed, and the manner in which it was to be proceed, could be satisfactorily settled.

The United States' Government have proposed two modes in which such a commission might be constituted; first, that it might consist of commissioners named in equal numbers by each of the two Governments, with an umpire, to be selected by some friendly European Power; secondly, that it might be entirely composed of scientific Europeans, to be selected by a friendly Sovereign; and might be accompanied in its operations by agents of the two different parties, in order that such agents might give to the commissioners assistance and information.

If such a commission were to be appointed, Her Majesty's Government think that the first of these two modes of constructing it would be the best, and that it should consist of members chosen in equal numbers by each of the two Governments. It might, however, be better that the umpire should be selected by the members of the commission themselves, rather than that the two Governments should apply to a third Power to make such a choice.

The object of this commission, as understood by Her Majesty's Government, would be to explore the disputed territory, in order to find within its limits, dividing highlands, which may answer the description of the Treaty; the search being first to be made in the due north line, from the monument at the head of the St. Croix; and if no such highlands should be found in that meridian, the search to be then continued to the westward thereof; and Her Majesty's Government have stated their opinion, that in order to avoid all fruitless disputes, as to the character of such highlands, the commissioners should be instructed to look for highlands which both parties might acknowledge as fulfilling the conditions required by the Treaty.

Mr. Forsyth, in his note of the 5th March, 1836, expresses a wish to know how the report of the commission would, according to the views of Her Majesty's Government, be likely, when rendered, to lead to an ultimate settlement of the question of boundary between the two Governments.

In reply to this enquiry Her Majesty's Government would beg to observe, that the proposal to appoint a commission originated not with them, but with the Government of the United States; and that it is therefore rather for the Government of the United States than for that of Great Britain, to answer this question.

Her Majesty's Government have themselves already stated that they have little expectation that such a commission could lead to any useful result, and that they would on that account be disposed to object to it; and if Her Majesty's Government were now to agree to appoint such a commission, it would be only in compliance with the desire so strongly expressed by the Government of the United States, and in spite of doubts which Her Majesty's Government still continue to entertain of the efficacy of the measure.

But with respect to the way in which the report of the commission might be likely to lead to an ultimate settlement of the question, Her Majesty's Government, in the first place, conceive that it was meant by the Government of the United States, that if the commission should discover highlands

answering to the description of the Treaty, a connecting line drawn from those highlands to the head of the St. Croix, should be deemed to be a portion of the boundary line between the two countries.

But Her Majesty's Government would further beg to refer Mr. Forsyth to the notes of Mr. McLane of the 5th June, 1833, and of the 11th and 28th March, 1834, on this subject; in which it will be seen that the Government of the United States appears to have contemplated as one of the possible results of the proposed commission of exploration, that such additional information might possibly be obtained respecting the features of the country in the district to which the Treaty relates, as might remove all doubt as to the impracticability of laying down a boundary in strict accordance with the letter of the Treaty.

And if the investigations of the proposed commission should shew that there is no reasonable prospect of finding a line strictly conformable with the description contained in the Treaty of 1783, the constitutional difficulties which now prevent the United States from agreeing to a conventional line, may possibly be removed, and the way may thus be prepared for the satisfactory settlement of the difference by an equitable division of the disputed territory.

But if the two Governments should agree to the appointment of such a commission, it would be necessary that their agreement should be first recorded in a Convention, and it would obviously be indispensable that the State of Maine should be an assenting party to the arrangement.

I am, &c.,
(Signed)

PALMERSTON.

Henry S. Fox, Esq.
&c. &c. &c.

No. 54.

Viscount Palmerston to Henry S. Fox, Esq.

Sir,

Foreign Office, November 19, 1837.

IN looking back to the correspondence which has passed between the British and American Governments upon the boundary question, I observe, that there is one point, with respect to which it seems necessary to reply to some observations contained in one of the notes of Mr. Forsyth.

Her Majesty's Government with a view to prevail upon that of the United States to come to an understanding with Great Britain upon the river question, had stated, that the King of the Netherlands, in his award, had decided that question according to the British interpretation of it, and had expressed his opinion, that the rivers which fall into the Bay of Fundy, are not to be considered as Atlantic Rivers for the purposes of the Treaty.

Mr. Forsyth, however, in his note of 28th April, 1835, controverts this assertion, and maintains that the King of the Netherlands did not, in his award, express such an opinion; and Mr. Forsyth quotes a passage from the award in support of this proposition.

But it appears to Her Majesty's Government, that Mr. Forsyth has not correctly apprehended the meaning of the passage which he quotes; for in the passage in question Mr. Forsyth supposes that the word "*alone*" is governed by the verb "*include*," whereas an attentive examination of the context will shew, that the word "*alone*" is governed by the verb "*divide*," and that the real meaning of the passage is, that the rivers flowing north and south from the highlands claimed by the United States, may be arranged in two genera; the first genus comprehending the rivers which fall into the St. Lawrence; the second genus comprehending those whose waters, in some manner or other, find their way into the Atlantic; but that even if according to this general classification, and in contradistinction from rivers flowing into the St. Lawrence, the rivers which fall into the bays of Chaleurs and Fundy, might be comprised in the same genus with the rivers which fall directly into the Atlantic, still the St. John and Restigouche form a distinct species by themselves, and do not belong to the species of rivers which fall *directly* into the Atlantic; for the St. John and Restigouche are not divided in company with any such last-mentioned rivers which fall into the St. Lawrence. And the award goes on to say, that, moreover, if this distinction between these two species were confounded, an erroneous

interpretation would be applied to a Treaty in which every separate word must be supposed to have a meaning; and a generic distinction would be given to cases which are purely specific.

The above appears to be the true meaning of the passage quoted by Mr. Forsyth; but if that passage had not been in itself sufficiently explicit, which Her Majesty's Government think it is, the passage which immediately follows it, would remove all doubt as to what the opinion of the King of the Netherlands was upon the river question; for that passage, setting forth reasons against the line of boundary claimed by the United States, goes on to say, that such line would not even separate the St. Lawrence rivers immediately from the St. John and Restigouche; and that thus the rivers which this line would separate from the St. Lawrence rivers, would need, *in order to reach the Atlantic*, the aid of *two intermediaries*, first the rivers St. John and Restigouche, and *secondly the bays of Chaleurs and Fundy*.

Now, it is evident from this passage, that the King of the Netherlands deemed the bays of Fundy and Chaleurs to be, for purposes of the Treaty, as distinct and separate from the Atlantic Ocean, as are the rivers St. John and Restigouche. For he specifically mentions those rivers and those bays, as the channels through which certain rivers would have to pass, in their way from the northern range of dividing highlands, down to the Atlantic Ocean; and it is clear that he considers that the waters of those highland rivers would not reach the Atlantic Ocean until after they had travelled through the whole extent, either of the Restigouche and the bay of Chaleurs, or of the St. John and the bay of Fundy, as the case might be; and for this reason, among others, the King of the Netherlands declared it to be his opinion that the line north of the St. John claimed by the United States, is not the line intended by the Treaty.

You will present a note to this effect to Mr. Forsyth.

I am, &c.

Henry S. Fox, Esq.
&c. &c. &c.

(Signed)

PALMERSTON.

No. 55.

Henry S. Fox, Esq. to Viscount Palmerston.—(Received December 26.)

My Lord,

Washington, December 5, 1837.

I HAVE the honour herewith to enclose a copy of the message of the President of the United States, which was communicated this day to both Houses of Congress, at the commencement of the ordinary session.

I have the honour to be, &c.

Viscount Palmerston, G.C.B.
&c. &c. &c.

(Signed)

H. S. FOX.

Inclosure in No. 55.

Extract from the Message of the President of the United States to Congress.

OF pending questions, the most important is that which exists with the Government of Great Britain in respect to our north-eastern boundary. It is with unfeigned regret that the people of the United States must look back upon the abortive efforts made by the Executive, for a period of more than half a century, to determine, what no nation should suffer long to remain in dispute, the true line which divides its possessions from those of other Powers. The nature of the settlements on the borders of the United States and of the neighboring territory, was for a season such that this perhaps was not indispensable to a faithful performance of the duties of the Federal Government. Time has, however, changed this state of things, and has brought about a condition of affairs in which the true interests of both countries imperatively require that this question should be put at rest. It is not to be disguised that, with full confidence often expressed in the desire of the British Government to terminate it, we are apparently as far from its adjustment as we were at the time of signing the Treaty of Peace in 1783. The sole result of long pending negotiations, and a perplexing arbitration, appears to be a conviction, on its part, that a conventional line must be adopted, from the impossibility of ascertaining the true one according to the description contained in that Treaty.

Without coinciding in this opinion, which is not thought to be well founded, my predecessor gave the strongest proof of the earnest desire of the United States to terminate, satisfactorily, this dispute, by proposing the substitution of a conventional line, if the consent of the States interested in the question could be obtained. To this proposition no answer has as yet been received. The attention of the British Government has, however, been urgently invited to the subject, and its reply cannot, I am confident, be much longer delayed. The general relations between Great Britain and the United States are of the most friendly character, and I am well satisfied of the sincere disposition of that Government to maintain them upon their present footing. This disposition has also, I am persuaded, become more general with the people of England than at any previous period.

It is scarcely necessary to say to you how cordially it is reciprocated by the Government and people of the United States. The conviction, which must be common to all, of the injurious consequences that result from keeping open this irritating question, and the certainty that its final settlement cannot be much longer deferred, will, I trust, lead to an early and satisfactory adjustment. At your last session I laid before you the recent communications between the two Governments, and between this Government and that of the State of Maine, in whose solicitude, concerning a subject in which she has so deep an interest, every portion of the Union participates.

No. 56.

Henry S. Fox, Esq. to Viscount Palmerston.—(Received February 14.)

My Lord,

Washington, January 10, 1838.

I HAVE had the honour to receive, by the messenger Kraus, your Lordship's two despatches of the 19th of November, conveying to me instructions upon the question of the north-eastern boundary. I have this day presented two official notes to the Secretary of State of the United States, in conformity with your Lordship's instructions. I shall lose no time in acquainting your Lordship with the earliest intimation which I may receive of the answer likely to be returned to the above communications by the Government of the United States.

I have the honour to be, &c.

Viscount Palmerston, G.C.B.

(Signed)

H. S. FOX.

&c. &c. &c

APPENDIX.

I.

Definitive Treaty of Peace and Friendship between His Britannic Majesty and the United States of America, Signed at Paris, 3rd September, 1783.

Appendix.

I.

Treaty of 1793.

In the name of the most holy and undivided Trinity.

IT having pleased the Divine providence to dispose the heart of the Most Serene and Most Potent Prince, George the IIIrd, by the grace of God, King of Great Britain, France, and Ireland, defender of the faith, Duke of Brunswick and Lunenburg, Arch-Treasurer, and Prince Elector of the holy Roman Empire, &c., and of the United States of America, to forget all past misunderstandings and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore; and to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual peace and harmony; and having for this desirable end already laid the foundation of peace and reconciliation, by the provisional Articles signed at Paris, on the 30th of November, 1782, by the Commissioners empowered on each part; which Articles were agreed to be inserted in, and to constitute, the Treaty of Peace, proposed to be concluded between the Crown of Great Britain and the said United States, but which Treaty was not to be concluded until terms of peace should be agreed upon between Great Britain and France, and His Britannick Majesty should be ready to conclude such Treaty accordingly; and the Treaty between Great Britain and France having since been concluded, His Britannick Majesty and the United States of America, in order to carry into full effect the provisional Articles above mentioned, according to the tenor thereof, have constituted and appointed, that is to say, His Britannick Majesty on his part, David Hartley, Esq., Member of the Parliament of Great Britain; and the said United States, on their part, John Adams, Esq., late a Commissioner of the United States of America at the Court of Versailles, late Delegate in Congress from the State of Massachusetts, and Chief Justice of the said State, and Minister Plenipotentiary of the said United States to their High Mightinesses the States General of the United Netherlands; Benjamin Franklin, Esq., late Delegate in Congress from the State of Pennsylvania, President of the Convention of the said State, and Minister Plenipotentiary from the United States of America at the Court of Versailles; John Jay Esq., late President of Congress, and Chief Justice of the State of New York, and Minister Plenipotentiary from the said United States, at the Court of Madrid; to be the Plenipotentiaries for the concluding and signing the present Definitive Treaty: Who, after having reciprocally communicated their respective full powers, have agreed upon and confirmed the following Articles:

ARTICLE I.

His Britannick Majesty acknowledges the said United States, viz. New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina,

Appendix.

I.

Treaty of 1783.

and Georgia, to be free, Sovereign, and Independent States; that he treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the Government, propriety and territorial rights of the same, and every part thereof.

ARTICLE II.

And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, viz. From the north-west angle of Nova Scotia, viz. that angle which is formed by a line drawn due north, from the source of St. Croix River to the highlands, along the said highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut river; thence down along the middle of that river, to the forty-fifth degree of north latitude; from thence by a line due west on said latitude until it strikes the river Iroquois or Cataraguy; thence along the middle of said river, into Lake Ontario; through the middle of said Lake, until it strikes the communication by water between that Lake and Lake Erie; thence along the middle of said communication into Lake Erie; through the middle of said Lake, until it arrives at the water-communication between that Lake and Lake Huron; thence along the middle of said water-communication into the Lake Huron; thence through the middle of said Lake to the water-communication between that Lake and Lake Superior; thence through Lake Superior northward of the Isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water-communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said Lake to the most north-western point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi, until it shall intersect the northernmost part of the thirty-first degree of north latitude:—South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the Equator, to the middle of the river Apalachicola or Catahouche; thence along the middle thereof, to its junction with the Flint river; thence strait to the head of St. Mary's river, and thence down along the middle of St. Mary's river to the Atlantic Ocean:—East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source; and from its source directly north to the aforesaid highlands, which divide the rivers that fall into the Atlantic Ocean, from those which fall into the river St. Lawrence: comprehending all Islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due East from the points where the aforesaid boundaries between Nova Scotia on the one part, and east Florida on the other, shall respectively touch the Bay of Fundy, and the Atlantic Ocean; excepting such Islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia.

ARTICLE III.

It is agreed, that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the grand bank and on all the other banks of Newfoundland: also in the gulph of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland, as British Fishermen shall use, (but not to dry or cure the same on that Island) and also on the coasts, bays and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground.

ARTICLE IV.

It is agreed, that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all *bond fide* debts heretofore contracted.

ARTICLE V.

It is agreed that the Congress shall earnestly recommend it to the Legislatures of the respective States, to provide for the restitution of all estates, rights and properties which have been confiscated, belonging to real British subjects: and also of the estates, rights and properties of persons resident in districts in the possession of His Majesty's arms, and who have not borne arms against the said United States: and that persons of any other

description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months unmolested in their endeavors to obtain the restitution of such of their estates, rights and properties as may have been confiscated: and that Congress shall also earnestly recommend to the several States, a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation, which, on the return of the blessings of peace, should universally prevail. And that Congress shall also earnestly recommend to the several States that the estates, rights, and properties of such last-mentioned persons shall be restored to them, they refunding to any persons who may be now in possession the *bond fide* price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights or properties since the confiscation.

And it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

ARTICLE VI.

That there shall be no future confiscations made, nor any prosecutions commenced against any person or persons, for or by reason of the part which he or they may have taken in the present war; and that no person shall on that account suffer any future loss or damage either in his person, liberty or property; and that those who may be in confinement on such charges at the time of the ratification of the Treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.

ARTICLE VII.

There shall be a firm and perpetual peace between His Britannick Majesty and the said States, and between the subjects of the one and the citizens of the other, wherefore all hostilities both by sea and land, shall from henceforth cease: all prisoners on both sides shall be set at liberty, and His Britannic Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any Negroes, or other property of the American Inhabitants, withdraw all his armies, garrisons and fleets, from the said United States, and from every port, place and harbour within the same; leaving in all fortifications the American artillery that may be therein: and shall also order and cause all archives, records, deeds and papers belonging to any of the said States, or their citizens, which in the course of the war, may have fallen into the hands of his officers, to be forthwith restored and delivered to the proper States and persons to whom they belong.

ARTICLE VIII.

The navigation of the river Mississippi, from its source to the ocean, shall for ever remain free and open to the subjects of Great Britain, and the citizens of the United States.

ARTICLE IX.

In case it should so happen that any place or territory belonging to Great Britain, or to the United States, should have been conquered by the arms of either, from the other, before the arrival of the said provisional Articles in America, it is agreed that the same shall be restored without difficulty, and without requiring any compensation.

ARTICLE X.

The solemn ratifications of the present Treaty, expedited in good and due form, shall be exchanged between the Contracting Parties, in the space of six months, or sooner, if possible, to be computed from the day of the signature of the present Treaty.

In witness whereof, we, the Undersigned, their Ministers Plenipotentiary, have in their name, and in virtue of our full powers, signed with our hands the present definitive Treaty, and caused the seals of our arms to be affixed thereto.

Done at Paris, this third day of September, in the year of our Lord, one thousand seven hundred and eighty-three.

(L.S.) D. HARTLEY.

(L.S.) JOHN ADAMS,

(L.S.) B. FRANKLIN.

(L.S.) JOHN JAY.

Appendix.

I.

Treaty of 1783.

II.

The Fifth Article of the Treaty signed at Ghent, December 24, 1814,

ARTICLE V.

Appendix.

II.

Fifth Article of the
Treaty of Ghent.

WHEREAS neither that point of the highlands lying due north from the Source of the River St. Croix, designated in the former Treaty of Peace between the two powers, as the north-west angle of Nova Scotia, nor the north-westernmost head of Connecticut River have yet been ascertained; and whereas that part of the boundary line between the dominions of the two powers, which extends from the source of the River St. Croix, directly north to the above mentioned north-west angle of Nova Scotia, thence along the said highlands which divide those rivers, that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean to the north-westernmost head of Connecticut River, thence down along the middle of that river to the 45th degree of north latitude, thence by a line due west on said latitude, until it strikes the river Iroquois, or Cataraguy, has not yet been surveyed, it is agreed that for these several purposes, two commissioners shall be appointed, sworn and authorised, to act exactly in the manner directed with respect to those mentioned in the next preceding Article, unless otherwise specified in the present Article. The said commissioners shall meet at St. Andrew's, in the province of New Brunswick, and shall have power to adjourn to such other place or places as they shall think fit. The said commissioners shall have power to ascertain and determine the points above-mentioned, in conformity with the provisions of the said Treaty of Peace of 1783; and shall cause the boundary aforesaid, from the source of the river St. Croix, to the river Iroquois, or Cataraguy, to be surveyed and marked according to the said provisions; the said commissioners shall make a map of the said boundary, and annex to it a declaration under their hands and seals, certifying it to be the true map of the said boundary, and particularising the latitude and longitude of the north-west angle of Nova Scotia, of the north-westernmost head of Connecticut River, and of such other points of the said boundary as they may deem proper. And both parties agree to consider such map and declaration as finally and conclusively fixing the said boundary. And in the event of the said two commissioners differing, or both, or either of them, refusing, declining or wilfully omitting to act, such reports, declarations or statements shall be made by them, or either of them, and such reference to a Friendly Sovereign or State shall be made in all respects, as in the latter part of the fourth Article is expressed, and in as full a manner as if the same was herein repeated.

III.

Convention between His Majesty and the United States of America,
relative to the reference to Arbitration of the disputed points under
the Fifth Article of the Treaty of Ghent. Signed at London,
September 29, 1827.

III.

Convention of Ar-
bitration.

WHEREAS it is provided by the fifth Article of the Treaty of Ghent, that in case the commissioners appointed under that Article, for the settlement of the boundary line therein described, should not be able to agree upon such boundary line, the report or reports of those commissioners, stating the points on which they had differed, should be submitted to some Friendly Sovereign or State; and that the decision given by such Sovereign or State on such points of difference, should be considered by the contracting parties as final and conclusive. That case having now arisen, and it having therefore become expedient to proceed to and regulate the reference as above described, His Majesty The King of the United Kingdom of Great Britain and Ireland, and the United States of America, have for that purpose, named their Plenipotentiaries, that is to say:—

His Majesty, on His part, has appointed the Right Honourable Charles Grant, a Member of Parliament, a member of His said Majesty's Most Honourable Privy Council, and President of the Committee of the Privy Council for Affairs of Trade and Foreign Plantations; and Henry Unwin Addington, Esquire:—

And the President of the United States has appointed Albert Gallatin, their Envoy Extraordinary, and Minister Plenipotentiary at the Court of His Britannic Majesty:—

Who, after having exchanged their respective Full Powers, found to be in due and proper form, have agreed to and concluded the following Articles:

Appendix.

III.

Convention of Arbitration.

ARTICLE I.

It is agreed that the points of difference which have arisen in the settlement of the boundary between the British and American Dominions, as described in the fifth Article of the Treaty of Ghent, shall be referred, as therein provided, to some friendly Sovereign or State, who shall be invited to investigate, and make a decision upon such points of difference.

The two Contracting Powers engage to proceed in concert to the choice of such friendly Sovereign or State, as soon as the ratifications of this Convention shall have been exchanged, and to use their best endeavours to obtain a decision, if practicable, within two years after the Arbitrator shall have signified His consent to act as such.

ARTICLE II.

The reports, and documents thereunto annexed, of the commissioners appointed to carry into execution the fifth Article of the Treaty of Ghent, being so voluminous and complicated, as to render it improbable that any Sovereign or State should be willing or able to undertake the office of investigating and arbitrating upon them, it is hereby agreed to substitute for those reports new and separate statements of the respective cases, severally drawn up by each of the Contracting Parties, in such form and terms as each may think fit.

The said statements, when prepared, shall be mutually communicated to each other by the Contracting Parties; that is to say, by Great Britain to the Minister, or Chargé d'Affaires, of the United States at London; and by the United States to His Britannic Majesty's Minister, or Chargé d'Affaires, at Washington, within fifteen months after the exchange of the ratifications of the present Convention.

After such communication shall have taken place, each party shall have the power of drawing up a second and definitive statement, if it thinks fit so to do, in reply to the statement of the other party so communicated, which definitive statement shall also be mutually communicated, in the same manner as aforesaid, to each other, by the Contracting Parties, within twenty-one months after the exchange of the ratifications of the present Convention.

ARTICLE III.

Each of the Contracting Parties shall, within nine months after the exchange of ratifications of this Convention, communicate to the other, in the same manner as aforesaid, all the evidence intended to be brought in support of its claim, beyond that which is contained in the report of the commissioners, or papers thereunto annexed, and other written documents laid before the commission under the fifth Article of the Treaty of Ghent.

Each of the Contracting Parties shall be bound, on the application of the other party, made within six months after the exchange of the ratifications of this Convention, to give authentic copies of such individually specified Acts of a public nature, relating to the territory in question, intended to be laid as evidence before the arbitrator, as have been issued under the authority, or are in the exclusive possession, of each party.

No maps, Surveys, or topographical evidence of any description, shall be adduced by either party beyond that which is hereinafter stipulated; nor shall any fresh evidence, of any description, be adduced or adverted to, by either party, other than that mutually communicated or applied for, as aforesaid.

Each party shall have full power to incorporate in, or annex to, either its first or second statement, any portion of the reports of the commissioners, or papers thereunto annexed, and other written documents laid before the commission under the fifth Article of the Treaty of Ghent, or of the other evidence mutually communicated or applied for, as above provided, which it may think fit.

ARTICLE IV.

The map, called Mitchell's map, by which the framers of the Treaty of 1783, are acknowledged to have regulated their joint and official proceedings, and the map A, which

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has been agreed on by the Contracting Parties, as a delineation of the water courses, and of the boundary lines in reference to the said water courses, as contended for by each party respectively, and which has accordingly been signed by the above named Plenipotentiaries at the same time with this Convention, shall be annexed to the statements of the Contracting Parties, and be the only maps that shall be considered as evidence, mutually acknowledged by the Contracting Parties, of the topography of the country.

It shall, however, be lawful for either party to annex to its respective first statement, for the purposes of general illustration, any of the maps, surveys, or topographical delineations which were filed with the commissioners under the fifth Article of the Treaty of Ghent, any engraved map heretofore published, and also a transcript of the above-mentioned map A, or of a section thereof, in which transcript each party may lay down the highlands, or other features of the country, as it shall think fit, the water courses, and the boundary lines, as claimed by each party, remaining as laid down in the said map A.

But this transcript, as well as all the other maps, surveys, or topographical delineations, other than the map A, and Mitchell's map, intended to be thus annexed by either party to the respective statements, shall be communicated to the other party, in the same manner as aforesaid, within nine months after the exchange of the ratifications of this Convention, and shall be subject to such objections and observations as the other Contracting Party may deem it expedient to make thereto, and shall annex to his first statement, either in the margin of such transcript, map or maps, or otherwise.

ARTICLE V.

All the statements, papers, maps, and documents above-mentioned, and which shall have been mutually communicated as aforesaid, shall without any addition, subtraction, or alteration whatsoever, be jointly and simultaneously delivered in to the Arbitrating Sovereign or State, within two years after the exchange of ratifications of this Convention, unless the arbiter, should not, within that time, have consented to act as such; in which case all the said statements, papers, maps, and documents shall be laid before him within six months after the time when he shall have consented so to act. No other statements, papers, maps, or documents shall ever be laid before the arbiter, except as hereinafter provided.

ARTICLE VI.

In order to facilitate the attainment of a just and sound decision on the part of the arbiter, it is agreed that, in case the said arbiter should desire further elucidation or evidence, in regard to any specific point contained in any of the said statements submitted to him, the requisition for such elucidation or evidence, shall be simultaneously made to both parties, who shall thereupon be permitted to bring further evidence, if required, and to make each a written reply to the specific questions submitted by the said Arbiter, but no further; and such evidence and replies shall be immediately communicated by each party to the other.

And in case the arbiter should find the topographical evidence laid, as aforesaid, before him, insufficient for the purposes of a sound and just decision, he shall have the power of ordering additional surveys to be made of any portions of the disputed boundary line or territory, as he may think fit; which surveys shall be made at the joint expence of the Contracting Parties, and be considered as conclusive by them.

ARTICLE VII.

The decision of the arbiter, when given, shall be taken as final and conclusive; and it shall be carried, without reserve, into immediate effect, by commissioners appointed, for that purpose, by the Contracting Parties.

ARTICLE VIII.

This Convention shall be ratified, and the ratifications shall be exchanged in nine months from the date hereof, or sooner, if possible.

In witness whereof, we, the respective Plenipotentiaries, have signed the same, and have affixed thereto the Seals of our Arms.

Done at London, the twenty-ninth day of September, in the year of our Lord, one thousand eight hundred and twenty-seven.

(L.S.)	CHA. GRANT.
(L.S.)	HENRY UNWIN ADDINGTON.
(L.S.)	ALBERT GALLATIN.

IV.

Decision of His Majesty the King of the Netherlands, upon the Disputed Points of Boundary under the Fifth Article of the Treaty of Ghent, between Great Britain and the United States of America.

NOUS, GUILLAUME, par la Grâce de Dieu Roi des Pays-Bas, Prince d'Orange-Nassau, Grand Duc de Luxembourg, &c. &c. &c.

AYANT accepté les fonctions d'Arbitrateur, qui Nous ont été conférées par la note de l'Ambassadeur Extraordinaire et Plénipotentiaire de la Grande Bretagne, et par celle du Chargé d'Affaires des Etats Unis d'Amérique, à Notre Ministre des Affaires Etrangères, en date du 12 Janvier, 1829, d'après l'Article V. du Traité de Gand du 24 Décembre, 1814, et l'Article I. de la Convention conclue entre ces Puissances à Londres le 29 Septembre, 1827, dans le différend qui s'est élevé entre Elles au sujet des limites de leurs possessions respectives :

Animé du désir sincère de répondre par une décision scrupuleuse et impartiale, à la confiance qu'elle Nous ont témoignée, et de leur donner ainsi un nouveau gage du haut prix que nous y attachons :

Ayant à cet effet dûment examiné et mûrement pesé le contenu du premier exposé ainsi que de l'exposé définitif du dit différend, que nous ont respectivement remis, le 1 Avril de l'année 1830, l'Ambassadeur Extraordinaire et Plénipotentiaire de Sa Majesté Britannique, et l'Envoyé Extraordinaire et Ministre Plénipotentiaire des Etats Unis d'Amérique, avec toutes les pièces qui y ont été jointes à l'appui :

Voulant accomplir aujourd'hui les obligations que nous venons de contracter par l'acceptation des fonctions d'Arbitrateur dans le susdit différend, en portant à la connaissance des deux Hautes Parties intéressées le résultat de Notre examen et Notre opinion sur les trois points dans lesquels se divise de leur commun accord la contestation :

Considérant que les trois points précités doivent être jugés d'après les Traités, Actes et Conventions conclus entre les deux Puissances, savoir, le Traité de Paix de 1783, le Traité d'Amitié, de Commerce et de Navigation de 1794, la Déclaration relative à la Rivière Saint Croix de 1798, le Traité de Paix signé à Gand en 1814, la Convention du 29 Septembre, 1827, et la Carte de Mitchell, et la Carte (A.) citées dans cette Convention :

Déclarons que,—

Quant au premier point, savoir, la question, Quel est l'endroit désigné dans les Traités comme l'angle nord-ouest de la Nouvelle Ecosse, et quels sont les Highlands séparant les Rivières qui se déchargent dans le Fleuve St. Laurent, de celles tombant dans l'Océan Atlantique, le long desquels doit être tirée la Ligne de Limites depuis cet angle jusqu'à la source nord-ouest de la Rivière Connecticut ?

Considérant,—

Que les Hautes Parties intéressées réclament respectivement cette Ligne de Limites au midi et au nord de la Rivière St. John, et ont indiqué chacune sur la Carte (A.) la ligne qu'elles demandent :

Considérant,—

Que selon les exemples allégués le terme Highlands s'applique non seulement à un pays montueux ou élevé, mais encore à un terrain, qui, sans être montueux, sépare des eaux

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coulant dans une direction différente, et qu'ainsi le caractère plus ou moins montueux et élevé, du pays à travers lequel sont tirées les deux lignes respectivement réclamées au nord et au midi de la Rivière St. John, ne saurait faire la base d'une option entr'elles :

Que le texte du second Article du Traité de Paix de 1789, reproduit en partie les expressions dont on s'est antérieurement servi dans la Proclamation de 1763, et dans l'Acte de Québec de 1774, pour indiquer les limites méridionales du Gouvernement de Québec, depuis le Lac Champlain, "in forty-five degrees of north latitude, along the highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, and also along the north coast of the Bay des Chaleurs."

Qu'en 1763, 1765, 1773, et 1789, il a été établi, que la Nouvelle Ecosse serait bornée au nord, jusqu'à l'extrémité occidentale de la Baie des Chaleurs, par la limite méridionale de la Province de Québec; que cette délimitation se retrouve pour la Province de Québec, dans la commission du Gouverneur Général de Québec de 1786, où l'on a fait usage des termes de la Proclamation de 1763, et de l'Acte de Québec de 1774; et dans les Commissions de 1786 et postérieures des Gouverneurs du Nouveau Brunswick pour cette dernière Province, ainsi que dans un grand nombre de Cartes antérieures et postérieures au Traité de 1783, et que l'Article Premier du dit Traité cite nominativement les Etats, dont l'indépendance est reconnue :

Mais que cette mention n'implique point l'entière coïncidence des limites entre les deux Puissances, réglées par l'Article suivant, avec l'ancienne délimitation des Provinces Anglaises, dont le maintien n'est pas mentionnée dans le Traité de 1783, et qui par ses variations continuelles, et par l'incertitude qui continua d'exister à son égard, provoqua de tems à autre des différends entre les Autorités Provinciales :

Qu'il résulte de la ligne tirée par le Traité de 1783 à travers les grands lacs à l'ouest du Fleuve St. Laurent, une déviation des anciennes Chartes Provinciales en ce qui concerne les Limites :

Qu'on cherchait en vain à s'expliquer pourquoi, si l'on entendait maintenir l'ancienne délimitation Provinciale, l'on a précisément fait usage dans la négociation de 1783 de la carte de Mitchell, publiée en 1755, et par conséquent antérieure à la Proclamation de 1763, et à l'Acte de Québec de 1774 :

Que la Grande Bretagne proposa d'abord la Rivière Piscataqua pour limite à l'est des Etats Unis, et ensuite n'accepta pas la proposition de faire fixer plus tard la Limite du Maine, ou de Massachusetts's Bay :

Que le Traité de Gand stipula un nouvel examen sur les lieux le quel ne pouvait s'appliquer à une limite historique ou administrative; et que dès-lors l'ancienne délimitation des Provinces Anglaises n'offre pas non plus une base de décision :

Que la longitude de l'angle nord-ouest de la Nouvelle Ecosse, laquelle doit coïncider avec celle de la source de la Rivière St. Croix, fut seulement fixée par la Déclaration de 1798, qui indiqua cette rivière :

Que le Traité d'Amitié, de Commerce et de Navigation de 1794 mentionne le doute qui s'était élevé à l'égard de la Rivière St. Croix; et que les premières Instructions du Congrès lors des négociations, dont résulta le Traité de 1783, placent le dit angle à la source de la Rivière St. John :

Que la latitude de cet angle se trouve sur les bords du St. Laurent, selon la carte de Mitchell, reconnue pour avoir réglé le travail combiné et officiel des négociateurs du Traité de 1783; au lieu, qu'en vertu de la délimitation du Gouvernement de Québec, l'on devrait le chercher aux highlands séparant les rivières qui se déchargent dans la Rivière St. Laurent, de celles tombant dans la mer :

Que la nature du terrain à l'est de l'angle précité n'ayant pas été indiqué dans le Traité de 1783, il ne s'en laisse pas tirer d'argument pour le fixer de préférence dans tel endroit, plutôt que dans un autre :

Qu'au surplus, si l'on croyait devoir le rapprocher de la source de la Rivière St. Croix, et le chercher, par exemple, à Mars Hill, il serait d'autant plus possible que la limite du Nouveau Brunswick tirée de-là au nord-est, donnât à cette Province plusieurs angles nord-ouest situés davantage au nord, et à l'est, selon leur plus grand éloignement de Mars Hill, que le nombre de degrés de l'angle mentionné dans le Traité n'été passé sous silence :

Que par conséquent l'angle nord-ouest de la Nouvelle Ecosse, dont il est ici question, ayant été inconnu en 1783, et le Traité de Gand l'ayant encore déclaré non constaté, la mention de cet angle historique dans le Traité de 1783, doit être considérée comme une pétition de principe, qui ne présente aucune base de décision; tandis que ci on l'envisage comme un point topographique, eu égard à la définition, viz. "that angle which is formed by a line drawn due north from the source of the St. Croix River to the Highlands," il forme simplement l'extrémité de la ligne "along the said Highlands, which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean," extrémité que la mention de l'angle nord-ouest de la Nouvelle Ecosse ne contribue pas à constater, et qui, étant à trouver elle-même, ne saurait mener à la découverte de la ligne qu'elle termine :

Enfin, que les argumens tirés des droits de Souveraineté exercés sur le fief de Madawaska, et sur le Madawaska Settlement, admis même que cet exercice fût suffisamment prouvé, ne peuvent point décider la question, par la raison, que ces deux établissemens

n'embrassent qu'un terrain partiel de celui en litige; que les Hautes Parties intéressées ont reconnu le pays situé entre les lignes respectivement réclamées par elles, comme faisant un objet de contestation, et qu'ainsi la possession ne saurait être censée déroger au droit; et que si l'on écarte l'ancienne délimitation des Provinces alléguée en faveur de la ligne réclamée au nord de la Rivière St. John, et spécialement celle mentionnée dans la Proclamation de 1763 et dans l'Acte de Québec de 1774, l'on ne saurait admettre à l'appui de la ligne demandée au Midi de la Rivière St. John, des arguments tendant à prouver que telle partie du terrain litigieux appartient au Canada ou au Nouveau Brunswick:

Considérant,—

Que la question, dépouillée des arguments non décisifs tirés du caractère plus ou moins montueux de terrain de l'ancienne délimitation des Provinces de l'angle nord-ouest de la Nouvelle Ecosse, et de l'état de possession, se réduit en dernière analyse à celles-ci, Qu'elle est la ligne tirée droit au nord depuis la source de la Rivière St. Croix, et quel est le terrain, n'importe qu'il soit montueux et élevé ou non, qui, depuis cette ligne jusqu'à la source nord-ouest de la Rivière Connecticut, sépare les rivières se déchargeant dans le Fleuve St. Laurent, de celles qui tombent dans l'Océan Atlantique; que les Hautes Parties intéressées ne sont d'accord que, sur la circonstance que la limite à trouver doit être déterminée par une telle ligne, et par un tel terrain; qu'elles le sont encore, depuis la Déclaration de 1798, sur la réponse à faire à la première question, à l'exception de la latitude, à laquelle la ligne tirée droit au nord de la source de la Rivière St. Croix doit se terminer: que cette latitude coïncide avec l'extrémité du terrain, qui depuis cette ligne jusqu'à la source nord-ouest de la Rivière Connecticut sépare les rivières se déchargeant dans le Fleuve St. Laurent, de celles qui tombent dans l'Océan Atlantique, et que, dès-lors, il ne reste qu'à déterminer ce terrain:

Qu'en se livrant à cette opération, on trouve d'un côté,—

D'abord, que si par l'adoption de la ligne réclamée au Nord de la Rivière St. John, la Grande Bretagne ne pourrait pas être estimée obtenir un terrain de moindre valeur, que si elle eût accepté en 1783 la Rivière St. John pour frontière, eu égard à la situation du Pays entre les Rivières St. John et St. Croix dans le voisinage de la mer, et à la possession des deux rives de la Rivière St. John dans la dernière partie de son cours, cette compensation serait cependant détruite par l'interruption de la communication entre le Bas Canada et le Nouveau Brunswick, spécialement entre Québec et Fredericton, et qu'on chercherait vainement quels motifs auraient déterminé la Cour de Londres à consentir à une semblable interruption.

Que si, en second lieu, en opposition aux Rivières se déchargeant dans le Fleuve St. Laurent, on aurait convenablement, d'après le langage usité en géographie, pu comprendre les Rivières tombant dans les Baies de Fundy et de Chaleurs, avec celles se jetant directement dans l'Océan Atlantique, dans la dénomination générale des rivières tombant dans l'Océan Atlantique, il serait hasardeux de ranger dans l'espèce, parmi cette catégorie, les Rivières St. John et Ristigouche, que la ligne réclamée au nord de la Rivière St. John sépare immédiatement des rivières se déchargeant dans le Fleuve St. Laurent, non pas avec d'autres rivières coulant dans l'Océan Atlantique, mais seules et d'appliquer ainsi, en interprétant la délimitation fixée par un Traité, où chaque expression doit compter, à deux cas exclusivement spéciaux, et où il ne s'agit pas du genre, une expression générale qui leur assignerait un sens plus large, ou qui, étendue aux Scoudiac Lakes, Penobscott et Kennebec, qui se jettent directement dans l'Océan Atlantique, établirait le principe, que le Traité de 1713 a entendu des highlands séparant aussi bien médiatement qu'immédiatement les rivières se déchargeant dans le Fleuve St. Laurent, de celles qui tombent dans l'Océan Atlantique, principe également réalisé par les deux lignes:

Troisièmement, que la ligne réclamée au nord de la Rivière St. John ne sépare pas même immédiatement les rivières se déchargeant dans le Fleuve St. Laurent, des Rivières St. John et Ristigouche, mais seulement des rivières qui se jettent dans les St. John et Ristigouche, à l'exception de la dernière partie de cette ligne près des sources de la Rivière St. John; et qu'ainsi, pour arriver à l'Océan Atlantique, les rivières séparées par cette Ligne de celles se déchargeant dans le Fleuve St. Laurent, ont chacune besoin de deux intermédiaires, savoir, les unes de la Rivière St. John et de la Baie de Fundy, et les autres de la Rivière Ristigouche et de la Baie des Chaleurs:

Et de l'autre,—

Qu'on ne peut expliquer suffisamment comment, si les Hautes Parties Contractantes ont entendu établir en 1783 la limite au Midi de la Rivière St. John, cette rivière, à laquelle le terrain litigieux doit en grande partie son caractère distinctif, a été neutralisée et mise hors de cause:

Que le verbe "divide" paraît exiger la contiguïté des objets qui doivent être "divided."

Que la dite limite forme seulement à son extrémité occidentale la séparation immédiate entre la Rivière Mettjarmette et la source nord-ouest de Penobscott, et ne sépare que médiatement les rivières se déchargeant dans le Fleuve St. Laurent, des eaux du Kennebec, du Penobscott et des Scoudiac Lakes; tandis que la limite réclamée au nord de la Rivière St. John sépare immédiatement les eaux des Rivières Ristigouche et St. John, et médiatement les Scoudiac Lakes, et les eaux des Rivières Penobscott et Kennebec, des Rivières se déchargeant dans le Fleuve St. Laurent, savoir, les Rivières Beaver, Metis, Rimousky, Trois

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Pistoles, Green, du Loup, Kamouraska, Onelle, Bras, St. Nicholas, du Sud, la Famine et Chaudière :

Que même en mettant hors de cause les Rivières Ristigouche et St. John par le motif qu'elles ne pourraient être censées tomber dans l'Océan Atlantique, la ligne Septentrionale se trouverait encore aussi près des Scoudiac Lakes, et des eaux du Penobscott et du Kennebec que la ligne méridionale des Rivières Beaver, Metis, Rimousky, et autres, se déchargeant dans le Fleuve St. Laurent, et formerait aussi bien que l'autre une séparation médiante entre celles-ci, et les Rivières tombant dans l'Océan Atlantique :

Que la rencontre antérieure de la limite méridionale, lorsque de la source de la Rivière St. Croix on tire un ligne au nord, pourrait seulement lui assurer un avantage accessoire sur l'autre, dans le cas où l'une et l'autre limite réunissent au même degré les qualités exigées par les Traités :

Et que le sort assigné par celui de 1783 au Connecticut, et au St. Laurent même, écarte la supposition, que les deux Puissances auraient voulu faire tomber la totalité de chaque rivière, depuis son origine jusqu'à son embouchure, en partage à l'une ou à l'autre :

Considérant,—

Que d'après ce qui précède, les arguments allégués de part et d'autre, et les pièces exhibées à l'appui, ne peuvent être estimés assez prépondérants pour déterminer la préférence en faveur d'une des deux lignes, respectivement réclamées par les Hautes Parties intéressées, comme limites de leurs possessions depuis la source de la Rivière St. Croix, jusqu'à la source nord-ouest de la Rivière Connecticut ; et que la nature du différend, et les stipulations vagues et non suffisamment déterminées du Traité de 1783, n'admettent pas d'adjuger l'une ou l'autre de ces Lignes à l'une des dites Parties, sans blesser les principes du droit et de l'équité envers l'autre :

Considérant,—

Que la question se réduit, comme il a été exprimé ci-dessus, à un choix à faire du terrain séparant les rivières se déchargeant dans le Fleuve St. Laurent, de celles qui tombent dans l'Océan Atlantique, que les hautes parties intéressées se sont entendues à l'égard du cours des eaux, indiqué de commun accord sur la Carte (A.) et présentant le seul élément de décision ; et que dès-lors les circonstances dont dépend cette décision, ne sauraient être éclaircies d'avantage, au moyen de nouvelles recherches topographiques, ni par la production de pièces nouvelles :

Nous sommes d'avis,—

Qu'il conviendra d'adopter pour limite des deux états une ligne tirée droit au nord depuis la source de la Rivière St. Croix jusqu'au point où elle coupe le milieu du thalweg de la Rivière St. John ; de-là le milieu du thalweg de cette rivière, en la remontant jusqu'au point où la Rivière St. Francis se décharge dans la Rivière St. John ; de-là le milieu du thalweg de la Rivière St. Francis, en la remontant jusqu'à la source de sa branche la plus sud-ouest, laquelle source nous indiquons sur la Carte (A) par la lettre (X.) authentiquée par la signature de notre Ministre des Affaires Etrangères ; de-là une ligne tirée droit à l'ouest jusqu'au point où elle se réunit à la ligne réclamée par les Etats Unis d'Amérique, et tracée sur la Carte (A.) ; de-là cette ligne jusqu'au point où, d'après cette carte, elle coïncide avec celle demandée par la Grande Bretagne ; et de-là la ligne indiquée sur la dite carte par les deux Puissances, jusqu'à la source la plus nord-ouest de la Rivière Connecticut :

Quant au second point, savoir, la question, quelle est la source la plus nord-ouest (north-westernmost head) de la Rivière Connecticut ?

Considérant,—

Que pour résoudre cette question, il s'agit d'opter entre la Rivière du Connecticut Lake, Perry's Stream, Indian Stream, et Hall's Stream :

Considérant,—

Que d'après l'usage adopté en géographie, la source et le lit d'une rivière sont indiqués par le nom de la rivière attaché à cette source et à ce lit, et par leur plus grande importance relative, comparée à celle d'autres eaux, communiquant avec cette rivière :

Considérant,—

Qu'une lettre officielle de 1772 mentionne déjà le nom de Hall's Brook, et que dans une lettre officielle postérieure de la même année, du même Inspecteur, on trouve Hall's Brook représenté comme une petite rivière tombant dans le Connecticut :

Que la rivière dans laquelle se trouve Connecticut Lake paraît plus considérable que Hall's, Indian, ou Perry's Stream ; que le Connecticut Lake et les deux lacs situés au nord de celui-ci semblent lui assigner un plus grand volume d'eau, qu'aux trois autres rivières ; et qu'en l'admettant comme le lit du Connecticut, on prolonge d'avantage ce Fleuve, que si l'on donnait la préférence à une de ces trois autres rivières :

Enfin que la Carte (A.) ayant été reconnue dans la Convention de 1827 comme indiquant le cours des eaux, l'autorité de cette Carte semble s'étendre également à leur dénomination, vu qu'en cas de contestation tel nom de rivière, ou de lac, sur lequel on n'eût pas été d'accord, eût pu avoir été omis, que la dite carte mentionne Connecticut Lake, et que

le nom de Connecticut Lake implique l'application du nom Connecticut à la rivière qui traverse de dit lac :

Nous sommes d'avis,—

Que le ruisseau situé le plus au nord-ouest de ceux qui coulent dans le plus septentrional des trois lacs, dont le dernier porte le nom de Connecticut Lake, doit être considéré comme la source la plus nord-ouest (north-westernmost head) du Connecticut.

Et quant au troisième point, savoir, la question, Quelle est la limite à tracer depuis la Rivière Connecticut le long du parallèle du quarante-cinq degré de latitude septentrionale, jusqu'au Fleuve St. Laurent, nommé dans les Traités Iroquois ou Cataraguy ?

Considérant,—

Que les Hautes Parties intéressées diffèrent d'opinion sur la question, de savoir, si les Traités exigent un nouveau levé de toute la ligne de limite depuis la rivière Connecticut, jusqu'au Fleuve St. Laurent, nommé dans les Traités Iroquois ou Cataraguy, ou bien seulement le complément des anciens levés provinciaux :

Considérant,—

Que le cinquième Article du Traité de Gand de 1814 ne stipule point qu'on levra telle parties des limites qui n'aurait pas été levée jusqu'ici, mais déclare, que les limites n'ont pas été levées, et établit qu'elles le seront :

Qu'en effet ce levé, dans les rapports entre les deux Puissances doit être censé n'avoir pas eu lieu depuis le Connecticut jusqu'à la Rivière St. Laurent, nommée dans les Traités Iroquois ou Cataraguy, vu que l'ancien levé s'est trouvé inexact, et avait été ordonné non par les deux Puissances d'un commun accord, mais par les anciennes autorités provinciales :

Qu'il est d'usage de suivre, en fixant la latitude, le principe de latitude observée :

Et que le Gouvernement des Etats Unis d'Amérique a établie certaines fortifications à l'endroit dit Rouse's Point, dans la persuasion que le terrain faisait partie de leur territoire, persuasion suffisamment légitimé par la ligne réputée jusqu'alors correspondre avec le quarante-cinq degré de latitude septentrionale :

Nous sommes d'avis,—

Qu'il conviendra de procéder à de nouvelles opérations pour mesurer la latitude observée, afin de tracer la limite depuis la Rivière Connecticut, le long du parallèle du quarante-cinq degré de latitude septentrionale, jusqu'au Fleuve St. Laurent, nommé dans les Traités Iroquois ou Cataraguy ; de manière cependant, qu'en tout cas, à l'endroit dit Rouse's Point, le territoire des Etats Unis d'Amérique s'étendra jusqu'au fort qui s'y trouve établi, et comprendra ce Fort et son rayon kilométrique.

Ainsi fait et donné sous Notre Sceau Royal, à la Haye, ce Dix Janvier, de l'an de Grace Mil Huit Cent Trente-un, et de Notre Règne de Dix-huitième.

(Signé) GUILLAUME.

Le Ministre des Affaires Etrangères.

(Signé) VERSTOLK DE SOELEN.

(Translation.)

WE, WILLIAM, by the Grace of God King of the Netherlands, Prince of Orange-Nassau, Grand Duke of Luxembourg, &c. &c. &c.

Having accepted the functions of Arbitrator, which were conferred upon us by the notes addressed to our Minister for Foreign Affairs by the Ambassador Extraordinary and Plenipotentiary of Great Britain, and by the Chargé d'Affaires of the United States of America, on the 12th of January 1829, according to the 5th Article of the Treaty of Ghent, of the 24th December 1814, and the first Article of the Convention concluded between those Powers at London on the 29th of September 1827, in the difference which has arisen between them on the subject of the Boundaries of their respective Possessions :

Animated by a sincere desire to make, by a scrupulous and impartial decision, a suitable return for the confidence which they have shown us, and thus to afford them a new pledge of the high value which we set upon it :

Having for this purpose duly examined and maturely weighed the contents of the first statement as well as of the definitive statement of the said difference, which the Ambassador Extraordinary and Plenipotentiary of His Britannic Majesty and the Envoy Extraordinary and Minister Plenipotentiary of the United States of America respectively delivered to us on the 1st of April of the year 1830, together with all the documents thereunto annexed in support of the same :

Desiring now to fulfil the obligations which we have contracted, by the acceptance of the functions of arbitrator in the above-mentioned difference, by communicating to the two high parties concerned the result of our examination, and our opinion upon the three points into which, by their common agreement, the question in dispute is divided :

Considering that the three points above referred to are to be determined according to the Treaties, Acts and Conventions concluded between the two Powers, that is to say, the

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Treaty of Peace of 1783, the Treaty of Amity, Commerce and Navigation of 1794, the Declaration relative to the River St. Croix of 1798, the Treaty of Peace signed at Ghent in 1814, the Convention of the 29th of September 1827, and Mitchell's map, and the map (A.) referred to in that Convention:

We declare,

That with regard to the first point, that is to say, Which is the spot designated in the Treaties as the north-west angle of Nova Scotia, and which are the Highlands dividing the rivers that empty themselves into the river St. Lawrence from those falling into the Atlantic Ocean, along which Highlands is to be drawn the line of Boundary from that angle to the north-west head of the Connecticut river:

Considering,—

That the high parties concerned respectively claim this line of Boundary, the one to the south and the other to the north of the River St. John, and have each marked upon the map (A.) the line which they demand:

Considering,—

That according to the instances which are adduced, the term Highlands is applied not only to a hilly or elevated country, but likewise to a tract of land which, without being hilly, divides waters flowing in different directions, and that thus the more or less hilly and elevated character of the country, across which are drawn the two lines respectively claimed to the north and to the south of the River St. John, could not form the ground of a choice between them:

That the text of the second Article of the Treaty of Peace of 1783 repeats in part the expressions which were previously employed in the Proclamation of 1763, and in the Quebec Act of 1774, to denote the Southern Limits of the Government of Quebec, commencing from Lake Champlain, "in forty-five degrees of north latitude along the Highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, and also along the north coast of the Bay des Chaleurs."

That in 1763, 1765, 1773, and 1782, it was laid down that Nova Scotia should be bounded to the north, as far as the western extremity of the Bay of Chaleurs, by the southern Boundary of the Province of Quebec; that this definition of Boundary is found again for the Province of Quebec in the commission of the Governor General of Quebec of 1786, in which the terms of the Proclamation of 1763, and of the Quebec Act of 1774, are employed; and for the Province of New Brunswick, in the commissions of the Governors of that Province of 1786, and of a later period, as also in a great number of maps antecedent and subsequent to the Treaty of 1783, and that the first Article of the said Treaty recites by name the States, of which the independence is recognized:

But that this mention thereof does not imply that the Boundaries between the two Powers, which were settled by the succeeding Article, entirely coincide with the ancient definition of Boundary of the English Provinces, the maintenance of which is not mentioned in the Treaty of 1783, and which, by its continual variations, and by the uncertainty which continued to exist with respect to it, gave rise from time to time to differences between the Provincial authorities:

That the line drawn by the Treaty of 1783 across the Great Lakes to the west of the River St. Lawrence, produces a deviation from the ancient Provincial charters in regard to Boundaries:

That it would be vain to attempt to explain why, if it were intended to maintain the ancient Provincial Boundary, Mitchell's map, which was published in 1755, and which was therefore antecedent to the Proclamation of 1763, and to the Quebec Act of 1774, should exactly have been chosen for use in the negotiation of 1783:

That Great Britain, in the first instance, proposed the River Piscataqua for the eastern Boundary of the United States, and subsequently did not accept the proposition for the postponement of the fixing of the Boundary of Maine, or of Massachusetts's Bay to a later period:

That the Treaty of Ghent stipulated a new Survey on the spot, which could not apply to a Boundary recorded in history, or defined by internal administration; and that, consequently, neither does the ancient definition of Boundary of the English Provinces offer a ground of decision:

That the longitude of the north-west angle of Nova Scotia, which is to coincide with that of the source of the River St. Croix, was only settled by the Declaration of 1798, which designated which was that river:

That the Treaty of Amity, Commerce and Navigation of 1794 mentions the doubt which had arisen with regard to the River St. Croix; and that the first instructions of the Congress at the time of the negotiations which produced the Treaty of 1783, place the said angle at the source of the River St. John:

That the latitude of this angle, according to Mitchell's map, which is allowed to have directed the joint and official labours of the negotiators of the Treaty of 1783, is to be found on the banks of the St. Lawrence; whereas, according to the Boundary of the Government of Quebec, it ought to be sought for at the Highlands, dividing the rivers which empty themselves into the River St. Lawrence from those falling into the sea:

That the nature of the tract of country to the east of the angle referred to, not having been described in the Treaty of 1783, no argument can thence be drawn for laying it down in one place rather than in another:

That, besides, if it were thought necessary to bring it nearer to the source of the River St. Croix, and to look for it, for instance, at Mars Hill, it would be by so much the more possible that the Boundary of New Brunswick, drawn from thence to the north-east, would give to that Province several north-west angles, situate more to the north and to the east, according to their greater distance from Mars Hill, since the number of degrees of the angle mentioned in the Treaty has been passed over in silence:

That, consequently, the north-west angle of Nova Scotia, which is here in question, having been unknown in 1783, and the Treaty of Ghent having declared it to be still unascertained, the mention of this angle in the Treaty of 1783, as a known point, is to be considered as an assumption of a fact which does not afford any ground for decision; whilst, if it be considered as a topographical point, with reference to the definition, viz. "that angle which is formed by a line drawn due north from the source of the St. Croix River to the Highlands," it merely forms the extreme point of the line "along the said Highlands," which divide those rivers which empty themselves into the River St. Lawrence from those "which fall into the Atlantic," an extreme point, which the mention of the north-west angle of Nova Scotia does not contribute to establish, since that angle being itself to be found, cannot lead to the discovery of the line which it terminates:

Finally, that the arguments drawn from the exercise of the rights of Sovereignty over the Fief of Madawaska, and over the Madawaska Settlement, even admitting that exercise to be sufficiently proved, cannot decide the question, because those two establishments comprise only a portion of the territory in dispute; because the High Parties concerned have recognised the country situate between the lines respectively claimed by them as constituting an object of controversy; and because in this view possession cannot be considered as detracting from right; and because, if the ancient Boundary line of the Provinces adduced in favour of the line claimed to the north of the River St. John, and especially that mentioned in the Proclamation of 1763, and in the Quebec Act of 1774, be set aside, there cannot be admitted, in support of the line claimed to the south of the River St. John, arguments tending to prove that such or such portion of the disputed territory belongs to Canada or to New Brunswick:

Considering,—

That the question, stripped of the inconclusive arguments derived from the more or less hilly character of the tract of country, from the ancient Boundary line of the Provinces, from the north-west angle of Nova Scotia, and from the state of possession, is reduced at last to these questions, Which is the line drawn due north from the source of the River St. Croix, and which is the tract of country, no matter whether it be hilly and elevated or not, which, from that line to the north-west head of the Connecticut River, divides the rivers emptying themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean; that the High Parties concerned are only agreed as to the circumstance that the Boundary to be found is to be settled by some such line and by some such tract of country; that they have further agreed, since the Declaration of 1798, as to the answer to be given to the first question, except with regard to the latitude at which the line drawn due north from the source of the River St. Croix is to terminate; that this latitude coincides with the extremity of the tract of country which, from that line to the north-west head of the Connecticut River, divides the rivers emptying themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, and that, consequently, it only remains to determine which is that tract of country:

That on entering upon this operation, it is found on the one hand,—

First, That if by the adoption of the line claimed to the north of the River St. John, Great Britain could not be deemed to obtain a tract of country of less value than if she had accepted in 1783 the River St. John for a Boundary, regard being had to the situation of the country between the Rivers St. John and St. Croix in the vicinity of the sea, and to the possession of both banks of the River St. John in the latter part of its course; that compensation would nevertheless be destroyed by the interruption of the communication between Lower Canada and New Brunswick, especially between Quebec and Fredericton, and that the motives would in vain be sought for which could have determined the Court of London to consent to such an interruption:

That, in the second place, if, according to the language usually employed in geography, the generic term of rivers falling into the Atlantic Ocean, could with propriety be applied to the rivers falling into the Bays of Fundy and Chaleurs, as well as to those which discharge themselves directly into the Atlantic Ocean, still it would be hazardous to class under this denomination the Rivers St. John and Ristigouche, which the line claimed to the north of the River St. John divides immediately from the rivers discharging themselves into the St. Lawrence, not in company with other rivers flowing into the Atlantic Ocean, but by themselves alone; and thus in interpreting a definition of Boundary fixed by Treaty, in which every expression ought to be taken into account, to apply to two cases which are exclusively specific, and which there is no question as to genus, a generic expression which would give to them a wider signification, or which, if extended to the Scandiac Lakes, the Penobscott and the Kennebec which discharge themselves directly into the

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Atlantic Ocean, would establish the principle, that the Treaty of 1783 contemplated Highlands dividing mediately as well as immediately the rivers discharging themselves into the St. Lawrence, from those which fall into the Atlantic Ocean, a principle equally realized by both lines:

Thirdly, that the line claimed to the north of the River St. John does not, except in its latter part, near the sources of the St. John, divide the rivers that empty themselves into the St. Lawrence, immediately from the Rivers St. John and Ristigouche, but only from the rivers which fall into the St. John and Ristigouche; and thus, that the rivers which this line divides from those discharging themselves into the St. Lawrence, require, all of them, in order to reach the Atlantic Ocean, two intermediate aids—the one set at the River St. John and the Bay of Fundy; the other set, the River Ristigouche and the Bay of Chaleurs:

And, on the other hand,—

That it cannot be sufficiently explained how, if the High Contracting Parties intended in 1783 to establish the Boundary to the south of the River St. John, that river, to which the territory in dispute owes in a great degree its distinguishing character, was neutralized and put out of the question:

That the verb "divide" appears to require contiguity in the objects which are to be "divided":

That the said Boundary forms only at its western extremity the immediate division between the River Mettjarmette and the north-west source of the Penobscott, and only divides mediately the rivers emptying themselves into the River St. Lawrence from the waters of the Kennebec, and of the Penobscott, and from the Scoudiac Lakes; whilst the Boundary claimed to the north of the River St. John separates immediately the waters of the Rivers Ristigouche and St. John, and mediately, the Scoudiac Lakes, and the waters of the Rivers Penobscott and Kennebec, from the rivers emptying themselves into the River St. Lawrence, that is to say, from the Rivers Beaver, Metis, Rimousky, Trois Pistoles, Green, du Loup, Kamouraska, Ouelle, Bras, St. Nicholas, du Sud, la Famine, and Chaudière:

That even putting the Rivers Ristigouche and St. John out of the question, on the ground that they cannot be considered to fall into the Atlantic Ocean, the north line would still be found as near to the Scoudiac Lakes, and to the waters of the Penobscott and of the Kennebec, as the south line would be to the Rivers Beaver, Metis, Rimouski, and others, emptying themselves into the River St. Lawrence, and would, as well as the other line, form a mediate separation between these last-named rivers, and the rivers falling into the Atlantic Ocean:

That the circumstance of the southern Boundary being the first that is met with in drawing a line north from the source of the River St. Croix, could afford that Boundary an incidental advantage over the other, only in case that both Boundaries should comprise in the same degree the qualities required by the Treaties:

And that the manner in which the Connecticut and even the St. Lawrence are disposed of in the Treaty of 1783, does away with the supposition that the two Powers could have intended that the entire course of each river, from its source to its mouth, should fall to the share of either one or other of them:

Considering,—

That, according to what is premised, the arguments adduced on either side, and the documents offered in their support, cannot be considered sufficiently preponderant to decide the preference in favour of either of the two lines respectively claimed by the High Parties concerned, as Boundaries of their possessions, from the source of the River St. Croix to the north-west head of the Connecticut River; and that the nature of the difference, and the vague and insufficiently defined stipulations of the Treaty of 1783, do not allow the adjudication of one or the other of these lines to one of the said parties, without departing from the principles of justice and of equity towards the other:

Considering,—

That the question is reduced, as has been said above, to a choice to be made of a tract of country separating the rivers discharging themselves into the River St. Lawrence from those which fall into the Atlantic Ocean; that the High Parties concerned have come to an understanding with regard to the water-courses, which are marked by common consent upon the map (A.) and which offer the only element of decision; and that, consequently, the circumstances on which this decision depends, cannot be further elucidated by means of topographical researches, nor by the production of new documents:

We are of opinion,—

That it will be proper to adopt for the Boundary of the two States a line drawn due north from the source of the River St. Croix to the point where such line intersects the middle of the bed (*thalweg*) of the River St. John; thence the middle of the bed of that river, ascending it to the point where the River St. Francis empties itself into the St. John; thence the middle of the bed of the River St. Francis, ascending it to the source of its southwesternmost branch, which source we mark on the map (A.) by the letter (X.), authenticated by the signature of our Minister for Foreign Affairs; thence a line drawn due west

to the point where it joins the line claimed by the United States of America, and traced on the map (A.) ; thence that line to the point at which, according to that map, it falls in with that claimed by Great Britain ; and thence the line, marked on the said map by both the two Powers, to the north-westernmost head of the Connecticut River :

With regard to the second point, that is to say, Which is the north-westernmost head of the Connecticut River ?

Considering,—

That, in order to solve this question, a choice is to be made between the river of Connecticut Lake, Perry's Stream, Indian Stream, and Hall's Stream :

Considering,—

That according to the practice adopted in geography, the source and the bed of a river are pointed out by the name of the river affixed to that source and to that bed, and by their greater relative importance compared with other waters communicating with that river :

Considering,—

That in an official letter, so early as 1772, mention is made of the name of Hall's Brook, and in an official letter of a later date in the same year from the same Surveyor, Hall's Brook is described as a little river falling into the Connecticut :

That the river in which Connecticut Lake is found appears to be more considerable than Hall's, Indian, or Perry's Stream ; that Connecticut Lake, and the two lakes situate to the south of the same, appear to give to it a greater volume of water than belongs to the three other rivers ; and that by admitting it to be the bed of the Connecticut, that river is prolonged to a greater extent than if the preference were given to either of the other three rivers :

Finally, that the map (A.) having been recognized in the Convention of 1827 as indicating the course of the waters, the authority of that map appears to extend equally to their names : seeing that in case of dispute, any name of river or lake respecting which the parties had not been agreed, might have been omitted ; that the said map mentions Connecticut Lake ; and that the name of Connecticut Lake implies the application of the name Connecticut to the river which passes through the said lake :

We are of opinion,—

That the rivulet situate farthest to the north-west of those which flow into the most northern of the three lakes, of which the last bears the name of Connecticut Lake, is to be considered as the north-westernmost head of the Connecticut :

And with regard to the third point, that is to say, Which is the Boundary to be traced from the River Connecticut along the parallel of the 45th degree of north latitude to the River St. Lawrence, called in the Treaties Iroquois or Cataraguy ?

Considering,—

That the High Parties concerned differ in opinion upon the question, Whether the Treaties require a new survey of the whole Line of Boundary from the River Connecticut to the River St. Lawrence, called in the Treaties, Iroquois or Cataraguy, or only the completion of the ancient provincial surveys :

Considering,—

That the fifth Article of the Treaty of Ghent of 1814 does not stipulate that such portion of the Boundaries as has not been surveyed already, shall be surveyed, but declares, that the Boundaries have not been surveyed, and determines that they shall be so :

That in fact that survey from the Connecticut to the River St. Lawrence, called in the Treaties, Iroquois or Cataraguy, is to be considered as not having taken place between the two Powers ; seeing that the ancient survey is found to be inaccurate, and that it had been ordered, not by the two Powers by common agreement, but by the ancient provincial authorities :

That in fixing a latitude, it is usual to follow the principle of observed latitude :

And that the Government of the United States of America has raised certain fortifications at a spot called Rouse's Point, under the persuasion that the ground formed a portion of their territory, a persuasion sufficiently justified by the line reputed up to that time to correspond with the parallel of the 45th degree of north latitude :

We are of opinion,—

That it will be proper to proceed to new operations for the measurement of the observed latitude, in order to trace the Boundary of the Connecticut River along the parallel of the 45th degree of north latitude, to the River St. Lawrence, called in the Treaties, Iroquois or Cataraguy ; in such manner, however, as that in any case, at the spot called Rouse's Point, the territory of the United States of America shall extend to the fort there raised, and shall comprise that fort, and a circle round it of one kilometer radius (*son rayon kilométrique*.)

Thus done, and given under our Royal Seal, at the Hague, this tenth day of January, in the year of our Lord One Thousand Eight Hundred and Thirty-one, and the Eighteenth of our Reign.

(Signed)

The Minister for Foreign Affairs,
(Signed)

WILLIAM.

VERSTOLK DE SOELEN.

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